

From: [REDACTED] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 22 March 2021 00:08
To: John Swinney <john.swinney@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Subject: FW: FAO Deputy First Minister- Ministerial Code Report

DFM,

Please find attached a copy of Mr Hamilton's report.

Kind regards

[REDACTED]

From: Henderson G (Gavin)
Sent: 22 March 2021 00:07
To: Deputy First Minister and Cabinet Secretary for Education and Skills ; McAllister C (Colin)
Subject: FW: FAO Deputy First Minister- Ministerial Code Report

From: [REDACTED]
Sent: 22 March 2021 00:02
To: Henderson G (Gavin) <Gavin.Henderson@gov.scot>; [REDACTED]
[REDACTED] Rennick NS (Neil) <Neil.Rennick@gov.scot>
Subject: FAO Deputy First Minister- Ministerial Code Report

Dear Gavin, Neil and [REDACTED],

Please see attached, for the attention of the Deputy First Minister, correspondence from Mr James Hamilton, Independent Adviser on the Ministerial Code, and a copy of Mr Hamilton's final report on his investigation into the First Minister's self-referral under the Ministerial Code.

This has been sent to you in line with the arrangements for receipt of the report that the Deputy First Minister has requested.

If the Deputy First Minister has any questions concerning the report, or if there is any assistance Mr Hamilton or the Secretariat can provide concerning the report, please let me know.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor on the Ministerial Code |
Please contact me on Skype or on [REDACTED].

James Hamilton
Independent Adviser on the Scottish Ministerial Code



John Swinney, Deputy First Minister
By email

22 March 2021

Dear Deputy First Minister,

MINISTERIAL CODE REFERRAL- REPORT

In accordance with my role as independent adviser on the Ministerial Code, I have investigated the matters set out in the remit for the investigation into the First Minister's self-referral under the Ministerial Code.

I enclose my final report, which addresses the questions set out in the remit, including whether the Ministerial Code is engaged regarding the meetings and discussions included in the remit; and whether there has been any breach of the Code and the nature of any such breach.

In the course of my investigation, participants have provided statements which raised additional issues that I considered relevant to the remit. Accordingly, the report covers these matters and considers whether there has been any breach of the Code and the nature of any such breach.

I understand that, in order to comply with certain court orders, it will be necessary to make significant redactions to the enclosed report before publication. I have enclosed a short note setting out my views on this

matter. I request that, in order to make my position on these issues clear, this be published alongside the report.

The remit also invited me to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure. I consider that this aspect of the remit would be best delivered alongside the consideration of any updated Procedure, and by both Ministerial Code advisers. Accordingly, I would propose to work with the other Ministerial Code adviser to prepare recommendations on this topic.

I note that the report is to be published on the day it is received.

Yours sincerely,

James Hamilton

Note on the publication of a redacted report

I have enclosed a copy of my report, without redacting anything which I considered relevant, and which is drafted in such a way as to fulfil the remit I was set in the way I consider necessary to give a full account of the matters I was asked to report on and the basis for my conclusions.

I understand that in order to comply with certain court orders it will be necessary to make redactions to the enclosed report before publication. This is so as to avoid the phenomenon known as jigsaw identification.

In particular, I have been advised by my own independent legal adviser that nothing may be published which could identify certain particular individuals, some of whom had a significant role in certain events. A redacted report that effectively erases the role of any such individual in the matters investigated in the report cannot be properly understood by those reading it, and presents an incomplete and even at times misleading version of what happened. In earlier drafts of the report I attempted to anonymise certain individuals in such cases but these attempts were not successful.

It is therefore impossible to give an accurate description of some of the relevant events dealt with in the report while at the same time complying with the court orders.

I am deeply frustrated that applicable court orders will have the effect of preventing the full publication of a report which fulfils my remit and which I believe it would be in the public interest to publish.

A key part of the report necessarily refers to certain events prior to 29 March 2018, which are highly significant for understanding who was aware of complaints made against Mr Salmond and what they did with that information. These discussions set in train a series of events which ultimately led to the meeting between the First Minister and the Former Chief of Staff on 29 March and the subsequent contacts between the First Minister and Mr Salmond. It is also essential to a full and true understanding of what happened to be able to discuss fully why, how and by whom these meetings were arranged.

Nevertheless, I understand that as the law now stands there appears to be no alternative approach which would allow my unredacted report to be published. For that reason I have reluctantly accepted that a redacted report should be published in order to bring this process to a close, and

because there is a strong public interest in publishing its conclusions. I have had no responsibility for deciding what to redact.

I request that any publication should include this note as a supporting document. I also ask that any redactions be presented in such a way as to show precisely where and how much text has been removed, so that those reading the report may understand the extent to which the information they are provided with has been limited by legal constraints.

James Hamilton

22 March 2021

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament

2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.

14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been (sic) further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister’s confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.

Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.

Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.

Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.

Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

- i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
- The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.”

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the Permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz Lloyd, Chief of Staff to the First Minister; Mr Geoffrey Aberdeen, formerly Chief of Staff to the former First Minister; Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson, Ms Lorraine Kay and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary although I had no power to compel any person to cooperate with the investigation. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required.

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled “Handling of harassment complaints involving current or former ministers” (subsequently referred to in this report as the Procedure) which is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister¹.

1.4. [REDACTED] Mr Geoffrey Aberdein, former Chief of Staff to Mr Salmond, met [REDACTED] Mr Aberdein says that [REDACTED] informed him that two complaints had been made against Mr Salmond and named one of the complainers. [REDACTED] disputes this. Having discussed the matter with other persons Mr Aberdein decided to inform Mr Salmond of what he had been told and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

1.5. On 29 March 2018 there was a meeting between the First Minister, [REDACTED] and Mr Aberdein, which took place in the First Minister’s office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister’s home. Mr Aberdein and Ms Lloyd were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

¹ [SP_SGHHC - FN29.pdf \(parliament.scot\)](#)- page 10

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled “Handling of harassment complaints involving current or former ministers.” It is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet” and will be referred to as “the Procedure” in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government’s People Directorate, as well as the Scottish Government Legal Directorate. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament’s Committee on Scottish Government Handling of Harassment Complaints.²

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government’s organisational strategy, as it did at the time covered by this statement...

The 2016 People Survey³ continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised⁴, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.⁵

² Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf](https://www.gov.scot/publications/SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf) (www.gov.scot)

³ [Scottish Government People Survey 2005 to 2018 - gov.scot](https://www.gov.scot/publications/Scottish+Government+People+Survey+2005+to+2018+-+gov.scot) (www.gov.scot)

⁴ <https://www.gov.scot/publications/foi-17-02235/>

⁵ Response to Committee of the Scottish Government Handling of Harassment Complaints, [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf](https://www.gov.scot/publications/SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf) (www.gov.scot) paragraph 4.

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.⁶

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers⁷ so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.⁸

⁶ Ibid., paragraph 5

⁷ [SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

⁸ [SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure. The Procedure did not cover historic claims against former civil servants.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the operation of the Procedure. These issues are further addressed in Chapter 13 in which I discuss Mr Salmond's claim that the manner in which Scottish Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It is not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

2.8. So far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC has prepared a report which was published on 16 March 2021.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I am not aware of anything in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper

concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal directorate, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond. It is not part of my remit to examine the administrative arrangements for the introduction of the Procedure and I make no comment about these.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers as a result of which she was not informed of the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that at present the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement. Later in this report I raise the question whether Ministers should bear responsibility for the activities of their special advisers.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. “An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative.” (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. Crucially in relation to the complaints against Mr Salmond it was the failure to observe this provision which led to the success of his petition for judicial review. The role of the Investigating Officer will be to undertake an impartial collection of facts, from, (sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister’s behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future. (Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is

dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with certain aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Meetings between [REDACTED] and the former Chief of Staff [REDACTED]

4.1. There were [REDACTED] and Mr Geoffrey Aberdein. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [REDACTED]

4.2. [REDACTED]

4.3. [REDACTED]

4. [REDACTED] In the light of the "me too" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] if there was anything of that nature, from his time as Chief of Staff, [REDACTED]

4.5. [REDACTED] had remarked the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than five cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister in general or into Alex Salmond in particular.

4.6. [REDACTED] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [REDACTED]

4.7. Whilst discussing “me too” in general, [REDACTED] described asking Mr Aberdeen whether he was aware of anything of concern. [REDACTED] said Mr Aberdeen had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [REDACTED] gave a general description of the incident which he presented as being in his view a minor incident, [REDACTED] says that he named the person concerned and that he did not seem to think it was a particularly significant incident. [REDACTED]

4.9. The conversation about “me too” also covered a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the Sky News report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [REDACTED] also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. A number of [REDACTED] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [REDACTED] suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdeen in his account makes no mention of discussing any of these matters [REDACTED] He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdeen, however, believes that the main purpose of [REDACTED]

4.13. [REDACTED]

_____ says that this resulted from _____ increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be an investigation in the future as it was clear there could be something to investigate. _____

██████████ says that Mr Aberdein took this to mean that someone within government had given ██████ information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. ██████ then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what ██████ was saying.

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by [REDACTED]. It is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] elaborate explanation of how Mr Aberdein could have misunderstood what [REDACTED] said.

There is no evidence to suggest that the First Minister was aware of Mr Aberdeen's version of events before the end of March. If Mr Aberdeen's account is correct I think it quite likely in any event that

[REDACTED] would undoubtedly have been well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a complaint

Furthermore, the information which Mr Aberdeen later gave Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdein telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what [REDACTED] had told him. In view of the fact that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [REDACTED] the existence of complaints and the identity of a complainer is credible.

4.21. In the absence of any evidence that [REDACTED] the First Minister about either the existence or the contents of the complaints, then the discussions between Mr Aberdein and [REDACTED] do not in my opinion constitute any breach of the Ministerial Code by the First Minister. [REDACTED]

It remains the fact that the name which Mr Aberdein says was given to him was in fact the name of one of the complainers against Mr Salmond.

5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a “lingering concern” about Mr Salmond. She described it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond under the Procedure had been made at the meeting on 2 April discussed below. Mr Aberdeen believes he told the First Minister of the existence of complaints on 29 March; he did not have details of these complaints at that time. (See paragraph 6.10 below).

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged but believes he [REDACTED] through a phone call.

6.2. Thereafter, he believes he may [REDACTED]
[REDACTED]

6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [REDACTED]
[REDACTED]

6.4. Mr Aberdein said that at [REDACTED] had informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [REDACTED]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of [REDACTED] the First Minister [REDACTED]

6.7. [REDACTED]
[REDACTED]
[REDACTED]

6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament. [REDACTED]

6.9 The First Minister described in an interview the circumstances in which the meeting was held. [REDACTED]

[REDACTED] Mr Aberdein had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. [REDACTED] said Mr Aberdein might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague, somebody that Mr Aberdein had worked closely with was having a birthday celebration in the office and Mr Aberdein might be attending and if so he might try to grab a word with her. In fact Mr Aberdein did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted

to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, that was [arranged] over the weekend. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdein agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdein's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the incident discussed by [REDACTED] and Mr Aberdein [REDACTED] concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. Mr Aberdein says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdein's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. It may be that [REDACTED]

[REDACTED] It may simply have been [REDACTED]

[REDACTED] However, this is speculation and it would probably not be right to place too much significance on the matter.

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to⁹.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdeen on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdeen's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdeen was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that [REDACTED] the meeting of 29 March [REDACTED] and she understood that [REDACTED] the possibility of allegations emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First Minister understood that [REDACTED] Mr Aberdeen [REDACTED] to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to

⁹ [Official Report 8 Jan 2019 \(parliament.scot\)](https://www.parliament.scot/Official-Reports/2019/Official-Report-8-Jan-2019)

discuss with her. Mr Aberdeen was said to have indicated [REDACTED] that Mr Salmond was in a state of distress and considering standing down from the SNP.

[REDACTED]

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdeen was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdeen agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdeen says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." By "in high level" Mr Aberdeen meant "not in detail"- indeed he made it clear to me in discussion that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdeen on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdeen that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraphs 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was not made known to the SNP and they did not approach the SNP directly, there was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [REDACTED] recalled a reference by Mr Aberdeen to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She thinks the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdein on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that I find it difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdein who was expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting¹⁰. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the

¹⁰ [Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to "the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting". The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings which she explained on the basis that she had no responsibility for operating the Government's harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdeen to the Scottish Parliament on 8 January 2019, although the First Minister's statement was technically a correct statement of the occasions on which she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Glasgow. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, an advocate retained on behalf of Mr Salmond, was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the "lingering suspicion" she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdein on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr

Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister's statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister's husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved..

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that "If it comes to it I will intervene". Mr Aberdeen did not hear this statement made but he had absented himself from the room at one point and he points out that it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond "I want to assist", which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, "I'm facing this terrible situation," it is entirely possible that you say things like, "I'd love to help if I could"—people say that kind of thing. This was a human situation. We are

talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.

As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, “Is there anything I have to do? Do I have to report this to anybody?” All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do¹¹.

In reply to a question from Mr Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, “Yeah, yeah, I’m going to intervene.” Rather, they are things like, “Well, I’ll help if it is appropriate or if it comes to it”—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.

A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process¹².

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

¹¹ [Official Report \(parliament.scot\)](#)- page 120

¹² [Official Report \(parliament.scot\)](#)- page 120

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked her to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).
If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of

opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[Redacted]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she] thought appropriate" (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond's belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond's interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general

complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme.

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the First Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the

Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. A process of review of the Procedure by Ms Laura Dunlop QC was completed on 16 March 2021. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as a few months before. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government's defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government's defence have been, rather belatedly, published by the Scottish Government on its website¹³.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO "will have had no prior involvement with any aspect of the matter being raised." Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel's response at different stages- "a very real problem indeed" and "extremely concerning" on 31 October, the Petition "more likely than not to succeed" on 6 December. On that date counsel advised

29 The question that will justifiably now be asked is where this takes us. There are only two options.

30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.

31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.

32 Ultimately, our own view is that the "least worst" option would be to concede the Petition. We understand how unpalatable that advice will be, and we do not tender it lightly. But we cannot let the respondents sail forth into January's hearing without the now very real risks of doing so being crystal clear to all concerned¹⁴.

¹³ <https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/>.

¹⁴ [OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate “was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case”. In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were “very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn’t think we had a stateable case...¹⁵”

14.5. On 17 December Counsel’s pessimism had deepened. A joint advice of Senior and Junior Counsel of that date includes the following passages:-

1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.

2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.

3 We introduce matters in this way to convey the seriousness of matters from our perspective.

31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a “scorched earth” one. It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those “in the crosshairs” – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no stateable defence). We are, however, perilously close to such a situation. We are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is no prospect of the petition being conceded. That decision is not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider

¹⁵ [OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

political picture is something that others are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely certain that they wish us to plough on regardless notwithstanding the concerns which we have outlined¹⁶

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

¹⁶ [OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by [redacted] as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now¹⁷

14.7. There followed what was described as a “watershed moment” on 21 December¹⁸. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting. As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond's proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of "the overarching duty on Ministers to comply with the law" stated in paragraph 2.30 of the Ministerial Code.

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were made but in each case accepted that the final say rested with the Law Officers. There is no doubt from the whole manner and tone of counsel's advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an evens chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond's petition.

¹⁷ [Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot/legislation/2016/20160001.htm)

¹⁸ OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf (www.gov.scot)

The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Scottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement in the paragraph “for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.” Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to “contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “*internal* (my emphasis) procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister’s position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The Ministerial Code: Special Advisers

16.1. Paragraphs 4.15 to 4.19 of the Ministerial Code deal with special advisers. Much of these provisions deal with appointment, distribution of posts, salaries and terms and conditions of appointment. Special Advisers are subject to a code of conduct which was last revised in March 2017. This may need some further revision in the light of the implementation of the Procedure. If the First Minister is to remain excluded from any involvement in the Procedure consideration might be given to whether this should also apply to the Chief of Staff and other special advisers. Consideration might also be given to whether some of the provisions of the Ministerial Code which apply to Ministers should also apply with appropriate modifications to special advisers, for example, the requirement to record external contacts.

17. The alleged leak to the Daily Record

17.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

17.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence to support this complaint he should refer the matter to the police.

18. Conclusions and recommendations

18.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government's response to the petition of Mr Salmond for judicial review of the Procedure.

18.2. For the reasons set out in detail above in this Report I am of the opinion that the First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

18.3. The remit also invited me to consider "whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." In view of the urgency of addressing the other issues relating to alleged breaches of the Ministerial Code which are referred to in the remit I decided to defer consideration of this. It would also in my opinion be appropriate that the other independent adviser also take part in this process. It would also seem sensible to await decisions on what changes if any are to be made to the Procedure. It might also be appropriate to consider the matters relating to special advisers referred to in Chapter 16 in this context.

James Hamilton

20 March 2021

Bibliography

The Ministerial Code

The Scottish Ministerial Code can be found at the following link:

[Scottish Ministerial Code: 2018 edition - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-code/pages/introduction.aspx)

The Procedure

The procedure entitled “Handling of harassment complaints involving current or former ministers”, under which the original complaints were handled, can be found here: [https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/](https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/pages/introduction.aspx)

The Scottish Government provided a submission to the Scottish Parliament Committee on the development of the policy. This can be found at the following link: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](https://www.gov.scot/publications/development-of-the-policy/pages/introduction.aspx)

The Scottish Government also provided a timeline of the development of the procedure. This can be found at the following link:

[Timeline for Statement 1 - 14 August\(1\).pdf \(parliament.scot\)](https://www.parliament.scot/Document/SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf)

Documents supporting written statement on the development of the policy

Circulation of draft version 5.0 of the procedure for review :

[SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/draft-version-5-0-of-the-procedure-for-review/pages/introduction.aspx)

Discussion of the procedure covering all harassment not only sexual harassment :

[SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/discussion-of-the-procedure-covering-all-harassment-not-only-sexual-harassment/pages/introduction.aspx)

Fairness at work

There are a number of publically available sources which give background on fairness at work and harassment complaints in the Scottish Government.

This link provides information on harassment complaints up to 2017:

[Internal complaint system: FOI release - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/internal-complaint-system-foi-release/pages/introduction.aspx)

This link provides information to People Survey conducted yearly in the Scottish Government to obtain view from our employees about the experience of working in the Scottish Government and its agencies:

[Scottish Government People Survey 2005 to 2018 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/people-survey-2005-to-2018/pages/introduction.aspx)

The Judicial Review

The Scottish Government provided a submission to the Scottish Parliament Committee on the conduct of the Judicial Review. This can be found at the following link: [SP SGHHC2 Written Statement on the Judicial Review 20 July 2020.pdf \(parliament.scot\)](#)

Official Committee's reports

The Committee's evidence session with the First Minister:
[Official Report \(parliament.scot\)](#)

First Minister's opening statement on 8th January 2018:

[Official Report 8 Jan 2019 \(parliament.scot\)](#)

Alex Salmond evidence submission of 23rd February 2021:
[Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

Documents to Legal privileged advice :

Joint counsel note of 6th December 2018 :
[OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

Consultation with Law Officers, Senior Counsel and SGLD:
[OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

Joint Counsel Note of 17th December 2018:
[OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

Joint Counsel Note of 19th December 2018:
[Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](#)

Counsel's email to SGLD regarding the prior contact between IO and complainants:
[OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

Call with Mr Hamilton - 22nd March 2021

From: Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
To: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>, Rennick NS (Neil) <neil.rennick@gov.scot>
Date: Fri, 26 Mar 2021 17:55:14 +0000

David Rogers

~

~ Copy to Neil Rennick

~

The Deputy First Minister had a short telephone call with Mr Hamilton on Monday afternoon following the receipt of the report on the ministerial code investigation.

~

Mr Swinney thanked Mr Hamilton for the report, noting that it had been a complicated piece of work.

~

Mr Hamilton agreed that there had been a number of challenges, but he was pleased that the report was now completed. He was also grateful for the great support that he had received from his Secretariat in arranging the review process and in developing the report,

~

The Deputy First Minister said that the report would be published later that afternoon, and that he would write to Mr Hamilton after the report was published.

~

Many thanks

██████████

~

██████████ | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: ██████████ | E: DFMCSE@gov.scot

~

Scottish First Minister Multiple Major Misleading of Parliament : James Hamilton QC

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Date: Thu, 04 Mar 2021 09:20:50 +0000

FAO James Hamilton QC Independent Advisor on the Scottish Ministerial Code

Dear [REDACTED], Secretariat to James Hutton

Since the last message there have been two further major cases of the SFM misleading the Scottish Parliament. These cases are vastly more serious than the one in connection to Mr Salmond (those are of course politically significant). The FM knows full well what constitutes their government; the misleading will have been done knowingly. These three cases here of misleading parliament are about the FM seeking to cover-up that the FM presides over a fundamentally unlawful government controlling an unlawful justice system. In addition to our first complaint that you referred to, Mr Hutton should have received a second complaint (FMQ 25 February 2021) via the Presiding Officer, see below. There is now a third (FM evidence at SGHHC 03 March 2021), below. The breaches are systematic. To summarise:

- 1. FMQ 18 January 2020** In connection to two separate deaths, the FM stated that the government has no role in Fatal Accident Inquiries (FAI). Two government ministers (the Lord Advocate and the Solicitor General) run the FAI system, making their decisions not alone but on advice and information from a ministerial-led government department (The Crown Office and Procurator Fiscal Service, COPFS). The government via these two ministers and COPFS unlawfully direct Police Scotland in the investigation of deaths. **The FM was covering-up that Scotland has no lawful system of investigating deaths.**
- 2. FMQ 25 February 2021** The FM referred to Scotland's 'independent justice system'. Scotland does not have one. The FM knows that the justice system here is run by their Scottish Government (ministers, government department, government officers, government's prosecution system), and that the police are constantly directed unlawfully by the government. The Scottish judiciary are almost entirely dependent on the government of the day (for the process and the content - evidence). In effect the Scottish Government exercises an extremely high and unlawful degree of control over the outcomes of the 'justice system'. It would be difficult for a justice system to be less independent, it is highly unlawful. The Court of Session judges have expressed concern (Calman Commission). **The FM was seeking to cover-up that Scotland does not have a lawful justice system.**
- 3. SGHHC 03 March 2021** Firstly the FM stated that they did not direct the police. The FM's ministers, their COPFS, and their government officers do direct the police, all part of the Scottish Government led by the FM. Secondly in the summary, the FM stated 'The Crown Office acts independently of the government'. The Crown Office is the Scottish Government. It can never be independent of something which it is always part of. Unlawfully having the prosecution system as

part of the government means that the government and friends are unlawfully outside the law, and the rule of law. **The FM was seeking to hide that Scotland does not have a lawful prosecution system.**

As ever, this would need to be verified but a competent check will show it to be correct. There is prosecution-grade evidence readily available on the main points. These three cases are very easy to check. They are there on the Scottish Parliament recordings in plain sight. The evidence and breaches are as near 100% guaranteed as it is possible to be.

We would be pleased to assist.

Regards

[REDACTED]

Dear [REDACTED],

Many thanks, much appreciated. It is an extremely important matter. The First Minister was covering up that we do not have an independent lawful system of investigating deaths. We also do not have a lawful prosecution system. As a former DPP Mr Hamilton should see the issues. A DPP is exactly what Scotland needs. The situation moves on rapidly. This last week we have dealt with the related issue of us not having a lawful police force. This started on 1 July 1999 when the then independent police forces of Scotland unlawfully had the control of their previously lawful investigations handed over to the government. As a former regulator of the police, I have pointed this out to the Chief Constable, the First Minister, and the Minister for Crime and the Police (Westminster), and others. There is no defence for this. It is all part of what is almost certainly the biggest error in Scottish and UK legal and policing history. I have regulated all UK sectors and enforced the law, I can see nothing to get anywhere near it. Without exaggeration, this is going to need the establishment of the Scottish parliament, government, policing, and judiciary on a proper legal and constitutional basis, just 22 years late.

All the best, thanks for patience on this very odd situation.

[REDACTED]

On 17/02/2021 12:59, [REDACTED] <[REDACTED]@gov.scot> wrote:

Dear [REDACTED]

Thank you for your email of 10 February 2021. I am acting as the secretariat to James Hamilton, Independent Advisor, for his work on the ongoing Ministerial code investigation and am responding to your email in that capacity.

I can confirm that your email has been received, and that I have passed it to Mr Hamilton.

Best wishes,

[REDACTED]

----- Forwarded Message -----

Scottish First Minister : New Breach of Ministerial Code by Knowingly Misleading
Subject: Parliament 03 March 2021 (SGHHC)

Date: Wed, 3 Mar 2021 20:25:23 +0000
From: [REDACTED]@btinternet.com>
Presiding Officers <PresidingOfficers@parliament.scot>,
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Patrick.Harvie.msp@scottish.parliament.uk, Willie.Rennie.msp@scottish.parliament.uk,
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CC: margaret.mitchell.msp@parliament.scot, Stuart.McMillan.msp@parliament.scot

FAO Rt Hon Ken Macintosh, MSP Presiding Officer, Scottish Parliament



Dear Mr Macintosh

Once again we have the First Minister blatantly misleading parliament, and on an extremely serious matter. This was at the end of today's SGHHC. It was appalling behaviour.

The FM said in summing up that **'The Crown acts independently of the government'. But the Crown is the Scottish Government.** The Crown cannot be independent of something that it is always part of. It is part of the Scottish Government under the First Minister. The Crown is the Scottish Government's prosecution service. Even the Crown Office and Procurator Fiscal Service Prosecutors Code states so. It's opening statement is 'As a department of the Scottish Executive....' https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Prosecution20Code20_Final20180412_1.pdf

This looks like compulsive behaviour. Is parliament, and the public, to be taken as fools? It was on prime time TV seen by a great many people. The First Minister was seeking to disguise that Scotland does not have an independent lawful prosecution system. A simple test is: How can the Scottish Government be prosecuted? It cannot because it is the prosecutor. The Scottish Government is unconstrained by the law. It can act with impunity.

In logic terms the First Minister is saying that 'The government is not the government'; it is madness. A First Minister who either does not know what constitutes their own government or is misleading on such a vital matter should be beyond belief. It appears to be self-disqualification from office.

How is this to be handled? Do you forward it to the independent advisor to the Ministerial Code or does the FM just resign? Unfortunately a lot of people will not know better and think that the FM is telling the truth.

Yours sincerely

[REDACTED] on behalf of ASAP-NHS
[REDACTED]

On 02/03/2021 08:47, Presiding Officers wrote:

Dear [REDACTED]

Thank you for your email to the Presiding Officer, the Rt Hon Ken Macintosh MSP.

This is a response to acknowledge receipt of your email.

Thank you again.

Yours sincerely

Office of the Presiding Officer

Click [here for information](#) on data protection and privacy

From: [REDACTED] <[\[REDACTED\]@btinternet.com](mailto:[REDACTED]@btinternet.com)>

Sent: 27 February 2021 11:53

To: Presiding Officers <PresidingOfficers@parliament.scot>;

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(Anas), MSP <Anas.Sarwar.msp@parliament.scot>; Lennon M (Monica), MSP

<Monica.Lennon.msp@parliament.scot>; leader@labour.org.uk

Subject: Scottish First Minister Breaches Ministerial Code by Knowingly Misleading Parliament 25 Feb 2021 'Absence of Independent Justice System'

FAO Rt Hon Ken Macintosh, MSP Presiding Officer, Scottish Parliament

cc Rt Hon Alister Jack MP Secretary of State for Scotland

Ruth Davidson, MSP Lead of Scottish Conservatives in Holyrood

Jackie Baillie MSP Acting Leader Scottish Labour

Patrick Harvie MSP Co-Convenor Scottish Greens

Willie Rennie MSP Leader Scottish Liberal Democrats

Simon Case CVO Cabinet Secretary, Cabinet Office



Dear Mr Macintosh

1. At FMQ on the 25 February 2021 the First Minister Nicola Sturgeon referred to Scotland's 'independent judiciary', this when the SFM knows full-well that we do not have one. Rather than being independent **the Scottish judiciary and the justice system are almost entirely and unlawfully dependent on the Scottish Government headed by the SFM.** The SFM knows what their own government contains and its role, the misleading has to be intentional. Scotland ceased to have an independent judiciary or an independent justice system with devolution. Please see **attached** summary roughly-prepared report, 'Absence of a Lawful Judiciary or Lawful Justice System in Scotland'. There is a large amount of prosecution-grade evidence readily available on the main points.

<https://www.bbc.co.uk/iplayer/episode/m000t3bb/scottish-first-ministers-questions-25022021>

2. At 07.00 minutes the SFM confuses the term 'political' with 'government'. The law prohibits the executive, the government from the role of running judicial processes or otherwise influencing the justice system and the judiciary. It makes no reference to 'political'. That was also a problem with the Lord Advocate at his urgent questions appearance on 24 February. It is not about whether he is a paid-up member of the SNP, the problem and unlawfulness is that he is always the Scottish Government. Is that further misleading of parliament on his part or an absence of competence in the law? The SFM then refers to 'Scotland's independent justice system', repeated at 10.17, and 12.15. That is the main misleading, with the Scotland Act 1998 as it is, the Scottish justice system can never be independent. That boat sailed 22 years ago with the introduction of the devolution act and the loss of the separation of the powers. Further the SFM then refers to 'people doing their job independent of government'. If the SFM means those involved in the justice system then the SFM is further misleading. These are the government (COPFS, Law Officers). You cannot be independent of something that you are always part of. Or they are dependent on the government (Police Scotland, Judiciary). These 'people' are compelled to constantly act unlawfully (e.g. interfering with the independence of the judiciary in breach of the Judiciary and Courts (Scotland) Act 2008, etc. etc.). Again the SFM full-well knows that the Law Officers and COPFS are part of the Scottish Government that they lead. The SFM also knows that the police and judiciary are dependent on the government. The current situation of ministers constantly and lawfully directing the police is on the police state spectrum. Compare what we have with lawful independent justice systems such as operate in the civilised world. Our situation is that bad. We can see why the term 'failed state' is now being used. It is embarrassing, it makes us look backward.

3. The SFM heads the government that unlawfully runs judicial processes. The judiciary is entirely dependent on the government for the processes, for the cases that it hears, and importantly there are the cases that it does not. The government unlawfully

controls most of the evidence. The government exercises a high and extremely unlawful degree of control over the outcome of the judiciary and judicial processes. It is legal insanity. All sanctioned and headed by the First Minister. There are major offences involved in this, but that is for another day.

4. The Scottish Government's control of judicial processes enables it to cover-up thousands of preventable patient deaths in its direct report NHS Scotland. Not one death in Scotland is lawfully investigated. In the year of COVID-19 the government's Lord Advocate has been involved in the attempted cover-up of the hundreds of deaths in the Scottish care homes disaster and in the emergent scandal of hospital acquired COVID-19 infection deaths in NHS Scotland. Both are attributable to **the Scottish First Minister, the Law Officers, and other senior ministers long-standing failure and refusal to uphold, implement, or comply with the UK-wide law on patient safety and for care homes.** This is the Health and Safety at Work etc. Act 1974 (HSWA), the Control of Substances Hazardous to Health Regulations 2002 (COSHH), the Management of Health and Safety at Work Regulations 1999 (MHSWR), PPE Regulations, 1992 and related. ASAP-NHS has repeatedly reminded the SFM and CS Health, and other senior ministers of the law but they have chosen to disregard the law. The consequences have been extremely detrimental to the people of Scotland.

5. You will be aware of a previous ASAP-NHS complaint on the **SFM misleading parliament at FMQ 18 January 2020.** This was where they said that the government does not decide on the handling of the investigation of deaths. This when the decision is made by two government ministers (Lord Advocate and Solicitor General) acting on information and advice from a ministerial-led government department, The Crown Office and Procurator Fiscal Service (COPFS), staffed by government officers. The government control of what must be independent judicial process enables the government to cover-up thousands of preventable patient safety deaths in its direct report NHS Scotland. This is a very serious misleading of parliament and the public (specific deaths of the ten year-old **Millie Main**, and then **Craig McClelland**). This complaint is now with James Hamilton QC independent adviser on the Scottish Ministerial Code. Given that the SFM was covering-up the fundamental issue of the government unlawfully running what must be independent processes, Mr Hamilton will be compelled to deal with this and competently. We seem to have confirmation that this will be investigated but it must be confirmed. As he is a former DPP Northern Ireland, he will immediately recognise the unlawfulness of the Scottish justice system. The SFM's breach of the ministerial code is guaranteed. They contradicted themselves in the same sentence, did it very clearly, twice, and on the publicly available Holyrood recording. Anyone can see the explicit misleading as the SFM attempts to disguise the unlawfulness of the handling of deaths, and the unlawfulness of the Scottish Government (ECHR, Human Rights Act 1998, Constitutional Reform Act 2005 (as it applies to Scotland), Judiciary and Courts (Scotland) Act 2008, natural law, natural justice, common law). The SFM is saying 'The government decides on the handling of the investigation of deaths, the government does not decide on the handling of deaths'. Logic is jettisoned. The major breach of the Ministerial Code is so definitive, the SFM is in effect saying 'Black is not Black'.

6. It could hardly involve more serious cases of the SFM misleading parliament, and even more so misleading the public. Anyone listening to the SFM on 25 February could be taken in and think that we have have a lawful judiciary and justice system. This when the Scottish approach to justice of having the government controlling it went out of fashion with the demise of the Third Reich. The Scottish system was in effect made unlawful in the UK and across most of Europe in 1953 with the signing of the European Convention of Human Rights (ECHR). Compliance with ECHR is the binding requirement contained in the Scotland Act 1998. Ironically the Scotland Act 1998 meant that ECHR could not be complied with in Scotland. The Act was and is ultra vires. It was drafted by Scottish law officers who did not understand the basics of the law or the Constitution. It was then rushed through Westminster without the scrutiny needed for setting up a new parliament. Having said that it only needs basic reading and comprehension competence plus a little awareness to see that the Act is fatally in error. An underlying problem is the absence of competence by the Scottish legal profession. This is in both the basics of the law (e.g. ECHR) but also in public safety law (HSWA etc.) We even have the Faculty of Advocates seeking to shut down criticism <http://www.advocates.org.uk/news-and-responses/news/2021/feb/importance-of-maintaining-confidence-in-judicial-system-and-rule-of-law> ASAP-NHS has dealt with that.

7. Please could you refer the SFM to the Independent Advisor on the Scottish Ministerial Code, James Hamilton QC? **Please could you confirm to Holyrood that this complaint has been referred to the Independent Adviser?** We would be pleased to assist Mr Hamilton on this issue which is fundamental to the basis and operation of the Scottish Parliament. It cannot be left as it is. This is part of the biggest error in Scottish and UK legal history. Many thanks for your time, we appreciate the difficulties. As well as problems, we can point to solutions going forwards but not for the legacy issues.
Yours sincerely

[REDACTED]
[REDACTED]

----- Forwarded Message -----

Subject: Scottish First Minister Breaches of Ministerial Code by Knowingly Misleading Parliament:

Unlawful Investigation of Deaths

Date: Mon, 15 Feb 2021 07:37:33 +0000

From: [REDACTED]@btinternet.com>

To: permanentsecretary@gov.scot, cabinet.secretary@cabinetoffice.gov.uk

CC: pressoffice@ukgovscotland.gov.uk, Alister.Jack.MP@parliament.uk,
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FAO Leslie Evans, Permanent Secretary to the Scottish Government

cc: Simon Case CVO, Cabinet Secretary, Head of the Home Civil Service



Dear Ms Evans

1. We write to you as head of the Civil Service in Scotland. It should have been rather obvious to you that **one third of civil servants in Scotland are being compelled to act in breach of major law and the Civil Service Code**. These are the 1,600 staff in the Scottish Government's personal unlawful prosecution service and investigator of deaths in Scotland, The Crown Office and Procurator Fiscal Service, COPFS.

Your staff are in constant breach of binding ECHR and the Human Rights Act 1998 Articles 2 and 6. This is on the 'Right to Life', the requirement for the independent investigation of deaths, and 'Fair Trial', the requirement for independent judicial processes and independent judiciary. They are in breach of section 1(1)(e) of the Judiciary and Courts (Scotland) 1998 in their obstruction and prevention of an independent judiciary. For reasons that will be apparent later, the Constitutional Reform Act 2005 by default has application and weight, and must be complied with. You and your civil servants would also be in breach of the Civil Service Code (Scotland). This in that they are compelled to breach two of the core values of objectivity and impartiality. They are also required to breach section 6 of the code on 'upholding the law and the administration of justice'. **What is being done to restore a lawful functioning Civil Service in Scotland ?**

2. As you should be fully aware, **Scotland has neither a lawful prosecution system nor a lawful system of investigating deaths**. Judicial processes legally must be independent of government. Instead in Scotland it is the government that runs them. These systems are unlawfully run by two government ministers (Lord Advocate, Solicitor General), a ministerial-led government department(COPFS), staffed by government officers, all under the Scottish First Minister. This totally trashes the law; it is legal insanity. It gets worse. Rather than an independent judiciary we have an almost entirely government-dependent judiciary. The most senior judges in Scotland, the judges of the Court of Session, recognised the unlawfulness of this in their submission to the Calman Commission (2008/09). Calman refused to look into their concerns, and so for over twenty years, the Scottish judiciary have knowingly operated an unlawful justice system. Since 1 July 1999, we have also had an unlawful system of policing. The government controls the police investigations and the Chief Constable constantly acts under unlawful instructions from government ministers. We have extensive confirming evidence from the Lord Advocate and the Chief Constable. **Consequently, additional civil servants in Police Scotland would also be involved in breaches of the law and the Civil Service Code.**

3. An underlying problem is that the Scotland Act 1998 unlawfully removed the separation of the powers, making it impossible for ECHR and the Human Rights Act 1998 to be complied with in Scotland. It created an unlawful parliament and government outside the law, an unlawful government-dependent judiciary, and an unlawful government-dependent system of policing. It makes it impossible for Scotland to comply with the rule of law, or human rights law, it thereby fails two of the

four tests of being a democracy (Copenhagen criteria, repeated in the Lisbon Treaty). The Scotland Act was and is ultra vires. It is strewn with errors, major, and fatal. The unlawfulness of the Act is not on minor issues, but the most fundamental matters, probably as serious as they could realistically be. The Act's main purpose ended up in creating an unlawful parliament, government, judiciary, unlawful justice system, and an unlawful system of policing. **By due lawful process the Scotland Act 1998 would be deemed null and void.** There is obviously a whole avalanche of consequences of the Act's unlawfulness. Legally the position would seem to revert to 30 June 1999, and the explicit law relating to the separation of the powers contained in the Constitutional Reform Act 2005 apply (with required adjusting amendments).

4. One consequence is **the collapse of the unlawful Scottish justice system.** We lost count after finding over 30 ways in which the Scottish justice system could collapse. You and the public will have seen in the news that this is now in progress. We have the current Lord Advocate Rt Hon James Wolffe QC triggering and promoting the collapse with some enthusiasm. We have the government's (First Minister's) failed prosecution of the former First Minister Alex Salmond. There is the Lord Advocate's self-confessed malicious prosecution of Rangers FC costing £23 million for starters and nominally bankrupting the government's (unlawful) prosecution service COPFS. We have his scrap with the previous Lord Advocate Lord Mulholland, and law suits threatened. There is Wolffe's completely unlawful handling of all the thousands of COVID-19 deaths in Scotland, and particularly the care homes disaster related to his government's extremely unlawful and fatal policy. There are now the thousands of non-COVID patients who have unlawfully been given the virus whilst in the government's direct report NHS Scotland hospitals, many hundreds of such deaths have now been recorded. Deaths that should have been repeated if your government had implemented the UK-wide law; you will recall our correspondence on the absence of this law and your refusal to act. Now the consequences of the absence of law have come home with vast consequences for the people of Scotland. There is the legal fiasco of the Pan-Am 103 Scottish trial that has now had to go the UK Supreme Court. Nothing about the original trial was lawful. We have the report on how senior judges have knowingly been operating illegally for 20-plus years. The judge's submission to Calman Commission is now being unearthed and circulating. This is like a collapsing house of cards, more will follow. By the unlawful Scotland Act 1998, the house of cards has never legally existed. It is part of the biggest error in Scottish and UK legal history, and also in public administration.

5. **The Scotland Act 1998 is the founding document of this Scottish Parliament and Government and yet it is rather obviously fatally flawed to the extent that the Act does not legally exist.** Only basic reading and comprehension abilities are required to see that the Act is very wrong. Anyone seriously involved in government in Scotland should understand what the Act says and means. A simple reading shows that the government runs the prosecutions and the investigation of deaths; the reader would know that this cannot be right. This approach to government went out of favour with the demise of the Third Reich; and since 1953 it has in effect been unlawful across most of Europe with the binding European Convention of Human Rights (which now applies to all 47 countries of the Council of Europe including the 27 of the EU). A little more knowledge and the reader of the Act knows that it is extremely unlawful. **Successive Permanent Secretaries to the Scottish Government have singularly failed at the first fence. They have failed to uphold the law, the constitution, or the administration of justice.**

6. Relating to the Salmond case, as you know part of the current Holyrood issues is the concern that the First Minister has been in breach of the Ministerial Code and has been misleading parliament. If this is found to be the case then the convention is cessation of office. Politically the issues are of course of significance. However there is a vastly bigger matter of **the First Minister explicitly misleading the parliament on the whole basis of the government and the justice system.** Please see messages below.

At FMQ 18 January 2020, the recording shows that the SFM stated very clearly twice, 'the Lord Advocate decides on Fatal Accident Inquiries, not the government'. The Lord Advocate as the FM knows is one of her government ministers and always part of the Scottish Government (section 44 Scotland Act 1998). He also makes his decisions on information and advice from the government (COPFS); this is the Lord Advocate unlawfully acting in breach of section 48(5). The FM was saying that 'The government decides on the investigation of deaths, the government does not decide on the investigation of deaths'. Logic: The First Minister is saying - 'the Government is not the Government', Black is not Black. It would be impossible to have a more definite logical untruth.

Part of the significance of this is that at the FMQ misleading, **the FM was seeking to hide that Scotland does not have a lawful independent system of investigating deaths. That the Scottish justice system lacks legitimacy and lawfulness, and with it the system of government.**

Please can you confirm that James Hamilton QC will be investigating the Scottish First Minister for major breaches of the Scottish Ministerial Code. This on their on misleading parliament in FMQ, with the self-contradictory and misleading statement on the unlawful system of investigating deaths in Scotland (18 January 2020).

There could hardly be a bigger concern than that a civil servant, a Permanent Secretary is fundamentally failing to uphold the law, the constitution, the administration of justice, or major aspects of the Civil Service Code. That they are running an unlawful Civil Service. That they are party to an unlawful government (executive), parliament (legislature), and justice system (judiciary).

These matters would of course need verifying. Any competent check will find them to be correct. The main points are backed by readily available prosecution-grade evidence. I regulated government (central and local), and enforced the law. I acted as a Crown Prosecutor.

Yours,

cc Simon Case CVO Cabinet Secretary, Head of the Home Civil Service

----- Forwarded Message -----

Subject: Scottish First Minister Breaches of Ministerial Code: Knowingly Misleading Parliament: Investigation of Deaths

Date: Wed, 10 Feb 2021 16:28:21 +0000

From: [REDACTED] <[REDACTED]@btinternet.com>

To: ceu@gov.scot

CC: ruth.davidson.msp@parliament.scot, oliver.mundell.msp@parliament.scot, jackie.baillie.msp@parliament.scot, Patrick.Harvie.msp@scottish.parliament.uk, alison.johnstone.msp@parliament.scot, alex.cole-hamilton.msp@parliament.scot, Willie.Rennie.msp@scottish.parliament.uk, editor@holyrood.com, Adam.Tomkins.msp@parliament.scot, anas.sarwar.msp@parliament.scot, monica.lennon.msp@parliament.scot, Bona Fide <asap.correspond@gmail.com>

FAO James Hamilton QC, Independent Adviser on the Scottish Ministerial Code



Dear Mr Hamilton

We note from FOI (FOI/202000108998, 6 Nov 2020) that you are dealing with the First Minister Rt Hon Nicola Sturgeon MSP and relevant breaches of the Scottish Ministerial Code.

In terms of scale of the breach of the code, we have raised a much more serious breach of the code. This with what should be the incontrovertible proof of a very clear Holyrood FMQ recording on a fundamental matter of government. It has the SFM giving opposite statements in one sentence. One would of necessity be an untruth. And clearly misleading both parliament and the public, and repeated the misleading in the FMQ. We drew it to the attention of the Presiding Officers but nothing happened. They had no answer, nor could there be.

The issue is that the SFM was seeking to hide that we do not have a lawful independent system of investigating deaths. Instead there is the unlawful Scottish system that is run by the Scottish Government. The situation is similar on prosecutions, the prosecution system is run by the government. There is no equivalent of your former role of a DPP. The heads of the systems of prosecutions and the investigation of deaths are two government ministers! Here the judiciary is almost wholly dependent on the government of the day, it cannot be considered to be independent. Scotland's most senior judges the Court of Session 'agree'. They well-knew the problem and raised it in their submission to the Calman Commission 2008/09. Calman said that it was 'not my job'; this when his brief said that it was (Scotland Act 1998 and the constitution). So the judges continued on their unlawful government-dependent way. For over twenty-years the Scottish judiciary have knowingly operated an unlawful justice system. We have done a quick summary report, 'The Absence of a Lawful Judiciary and Lawful Justice System in Scotland'. What we are now seeing, week-on-week, is the predicted collapse of the Scottish justice system. The Salmond case and now the Rangers FC case, are just the most visible demonstration so far. We counted over 30 ways that the Scottish justice system could fall, this when one would be considered to be excessive.

As HM Inspector (8 titles) I have regulated all GB/UK sectors, including government, judiciary, courts, and police forces; constantly enforcing the law. I acted as a Crown Prosecutor. I also advised and sat with HM Coroners on deaths that I had investigated. I introduced the application of the GB/UK-wide law to infection control, the main legislation that applies to coronavirus (HSWA 1974, COSHH). Nicola Sturgeon and other senior ministers repeatedly refused to implement this law. The law is almost completely absent. This FM's policy will have cost in the region of 20,000 reasonably preventable premature deaths in Scotland over the last ten years, and on-going. The Scottish care homes deaths on current data were particularly bad. Sending known infected patients into care homes was serving a death sentence on many people in Scotland. It was not only 'wrong', it was extreme unlawfulness by the Scottish Government. ASAP-NHS repeatedly warned the FM on infections and the law but they ignored it. Healthcare and social care are devolved but the reserved law on all public safety still applies, that is demonstrated in rare government prosecutions (GB's HSWA 1974).

Relevant to the Salmond case (legally it madly reduced to the current FM prosecuting the former FM, and losing), we are also dealing with 'Scottish Policing Unlawful'. This is linked to the government's unlawful investigation into the Scottish care homes COVID-19 disaster involving the hundreds of preventable deaths. Back to where we started, there is no independent system of investigating deaths in Scotland. This weekend it is going back in reply to the Chief Constable and the First Minister. Here is the opening:

Policing in Scotland became unlawful on 1 July 1999. This was when the Scotland Act 1998 (ultra vires) unlawfully handed over the control of police investigations to the Scottish Government. This was in the form of two Scottish Ministers (the Lord Advocate, and the Solicitor General), a ministerial-led government department (The Crown Office, COPFS), staffed by government officers. All under the Scottish First Minister. Breach ECHR and the Human Rights Act 1998 Article 6, and much other law.

On the same day, similarly the previously lawful independent systems of prosecutions and the investigation of deaths also passed into the control of the Scottish Government. The lawful independent judiciary became almost entirely dependent on the Scottish Government of the day, and thereby became unlawful. At a stroke, Scotland failed two of the four tests of being a democracy (rule of law, human rights). Remarkably, from the 1 July 1999, Scotland de facto ceased to be in any form a functioning democracy.

Please can you personally confirm that this has through to you?

As you can imagine there is vast amount behind this. The 'justice' system is legal insanity. With the absence of a lawful justice system in Scotland, the matters have had to be referred to the UK Supreme Court. It should be for them to make representation to the UK Government to address the unlawfulness of the Scotland Act 1998. This is for the Leader of the House and the Cabinet Office. There has been engagement from two previous CO Cabinet Secretaries on related matters. Many thanks for your time

[REDACTED]

----- Forwarded Message -----

Subject: Scottish First Minister Knowingly Misleading Parliament: Investigation of Deaths

Date: Mon, 3 Feb 2020 11:55:44 +0000

From: [REDACTED] <[REDACTED]@btinternet.com>

To: presidingofficers@parliament.scot

CC: jackson.carlaw.msp@parliament.uk, richard.leonard.msp@parliament.scot, patrick.harvie@scottishgreens.org.uk, willie.rennie.msp@scottish.parliament.uk, monica.lennon@parliament.scot, Monica.Lennon.msp@parliament.scot, Anas.Sarwar.msp@parliament.scot, justice.committee@scottish.parliament.uk, publiccorrespondence@cabinetoffice.gov.uk, enquiries@scotlandoffice.gsi.gov.uk, enquiries@advocategeneral.gsi.gov.uk, tony.lloyd.mp@parliament.uk, [REDACTED] <[REDACTED]@parliament.scot>, [REDACTED], [REDACTED], [REDACTED], [REDACTED] <[REDACTED]@stv.news>, [REDACTED], [REDACTED], news@thecourier.co.uk, news@sundaypost.com, [REDACTED], editor@hollyrood.com, newsdesk@independent.co.uk, [REDACTED], alison.johnstone.msp@scottish.parliament.uk, adam.tomkins.msp@parliament.scot,

news@skynews.com, [REDACTED]

pj.newsdesk@ajl.co.uk

Rt Hon Ken Macintosh, MSP Presiding Officer, Scottish Parliament

Dear Mr Macintosh

On the 16th January 2020 at First Ministers Questions, the recording shows that the First Minister Rt Hon Nicola Sturgeon knowingly misled Parliament on an extremely serious matter. The misleading needs no opinion, the misleading is guaranteed, objective, and anyone can check it on the recording and the records. At the time the FM proved the misleading themselves. It needed no additional evidence. The misleading should have been obvious to anyone involved in government in Scotland. However so far it does not seem to have been picked up. It relates to the failure to investigate suspicious deaths in Scotland or it having a lawful system to do so.

The FM stated very clearly on two separate occasions in relation to Fatal Accident Inquiries (FAIs) that **'The Law Officers decide on FAIs, the Government does not decide on FAIs'**. **The FM knows that the Law Officers are the Scottish Government** (section 44 Scotland Act 1998). The FM knows that the Law Officers are in their government.

The FM said it in relation to the death of the ten-year old Milly Main at the Queen Elizabeth University Hospital. Anas Sarwar MSP was following up on her family requesting that the Lord Advocate carry out a Fatal Accident Inquiry into her death including relating to failures in infection control measures.

The misstatement by the FM was not a slip of the tongue. It was repeated in the same FMQ in relation to the **death of Craig McClelland**, this is in response to FMQ from Richard Leonard MSP.

If the FM wants to say that the decisions on FAIs are made independent of government, then who does decide? The Law Officers are the Lord Advocate and the Solicitor General and they are always Scottish Ministers and the government. They do not even make their decisions independently. They act on investigations and advice from their ministerial-led government department, COPFS –the Crown Office and Procurator Fiscal Service. The law officers are part of the Scottish Government led by the FM, everyone involved is the government. There is absolutely no-one involved in the FAI decisions who is independent of government. **Of course the ministerial code applies, section 1.3 part c. Because the FM knows that the law officers are in her government, the second part also applies.** <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

The matter covered by the misstatement is exceptionally serious. It relates to a very large number of deaths. It seeks to hide that we in Scotland do not have an independent or lawful system of investigating deaths: unlawfully the government controls the judicial process. We even have the infamous quote from the current Lord Advocate as head of the system of investigations and prosecutions 'My loyalty is to my government' The Times (Scotland) April 1st 2017.

The SFM, and her legal advisers the Lord Advocate and the Solicitor General know full-well that no legitimate government can run the system of investigating deaths. Across all of the UK and all 47 countries of Europe, the Scottish Government's system ranks as extremely unlawful, and inevitably corrupt. Following the FM's 'misstatement' the ministers involved do not seem to have addressed the untruth. The Lord Advocate the Rt Hon James Wolffe QC, and the Solicitor General Alison Di Rollo QC seem content for the misleading to stand. So

too are the other ministers involved in the two deaths, these are the Justice Minister Humza Yousaf and the Health Minister Jeane Freeman OBE. Similarly the rest of the Cabinet seem to have done nothing despite their collective responsibility.

All MSPs know what constitutes the Scottish Government. They all know that it is the FM, the Law Officers (who are also Scottish Ministers), and the other Ministers. By giving the Parliament false assurance on the system of investigating deaths and obstructing its questioning and purpose, it seems that the FM could also fall foul of 'contempt of Parliament'.

The SFM would appear to be repeating the Profumo error of not telling the truth to Parliament. The government does decide on the investigation of deaths. In this case the consequences of the minister's misleading is vastly greater. The FM is in effect covering-up that Scotland does not have an independent or lawful system of investigating deaths. The cover-up permits a very large number of preventable premature deaths in the FM's NHS Scotland. No-one has been lawfully and competently investigating the healthcare deaths but it will be thousands of preventable deaths over the last ten years. If the minister, or ministers, cannot be relied on to tell the truth, then the Scottish Parliament is holed below the waterline. **It should be relied on that the Scottish Parliament upholds the law, the constitution, and its codes of conduct. Holyrood would be failing in a basic test of being a functioning parliament if it did not do so.**

It would be extremely damaging to Holyrood and to Scotland's reputation if the Parliament fails to uphold the law on the investigation of deaths, and on the Ministerial Code. It would then require others with the legal power to ensure that the reserved law on public safety and ECHR were upheld and so protect the people of Scotland and secure justice.

Yours sincerely

[Redacted Signature]

The Scottish Parliament: Making a positive difference to the lives of the people of Scotland
Pàrlamaid na h-Alba: A' toirt deagh bhuaidh air beatha sluagh na h-Alba

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The information in this email may be confidential. If you think you have received this email in error please delete it and do not share its contents.

Re: Personal- Ministerial Code Referral- Correspondence from James Hamilton

From: Duncan Hamilton <duncanhamilton@amadvocates.co.uk>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Thu, 04 Mar 2021 22:09:00 +0000
Attachments: image001.png (8.01 kB)

Noted with thanks.

Best

Duncan

Duncan Hamilton
Advocate

[REDACTED]
duncanhamilton@amadvocates.co.uk

Arnot Manderson Advocates, Parliament House, Edinburgh, EH1 1RF t [REDACTED]

[REDACTED]
www.amadvocates.co.uk



On 4 Mar 2021, at 17:22, [REDACTED] <[REDACTED]@gov.scot> wrote:

Dear Mr Hamilton,

Many thanks for your email. Mr Hamilton would like to thank you for your statement.

If he has any further questions I will let you know as soon as possible.

Best wishes,

[REDACTED]

From: Duncan Hamilton <duncanhamilton@amadvocates.co.uk>
Sent: 02 March 2021 12:01
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear Mr Hamilton

Further to the position outlined by Mr Salmond, I have provided a statement to the Parliamentary Committee this morning.

I attach that statement and trust that it addresses most of the matters of relevance for your own Inquiry.

I am happy to answer any additional questions you may have.

Regards

Duncan Hamilton

Duncan Hamilton
Advocate

duncanhamilton@amadvocates.co.uk

Arnot Manderson Advocates, Parliament House, Edinburgh, EH1 1RF t: [REDACTED]
[REDACTED] www.amadvocates.co.uk

<image001.png>

From: "[REDACTED] [REDACTED]@gov.scot" <[REDACTED] [REDACTED]@gov.scot>
Date: Monday, 1 March 2021 at 16:34
To: DUNCAN HOME <duncanhamilton@amadvocates.co.uk>
Subject: RE: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear Mr Hamilton,

Please see attached correspondence from Mr James Hamilton.

Best wishes,

[REDACTED] [REDACTED]

From: Duncan Hamilton <duncanhamilton@amadvocates.co.uk>
Sent: 30 November 2020 10:54
To: [REDACTED] <[REDACTED] [REDACTED]@gov.scot>
Subject: Re: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Many thanks [REDACTED]

Best wishes

Duncan

Duncan Hamilton
Advocate

duncanhamilton@amadvocates.co.uk

Arnot Manderson Advocates, Parliament House, Edinburgh, EH1 1RF t: [REDACTED]
[REDACTED]
www.amadvocates.co.uk



On 30 Nov 2020, at 10:31, [REDACTED] [REDACTED]@gov.scot wrote:

Dear Duncan,

Many thanks for your swift response, which I had passed on to Mr Hamilton.

Mr Hamilton understands your position on this matter and is grateful for your consideration of his request.

Best wishes,

[REDACTED]

From: Duncan Hamilton

Sent: 25 November 2020 14:46

To: [REDACTED]

Subject: Re: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear [REDACTED]

Many thanks for this letter which I have considered carefully.

I regret that my professional duties and obligations do not permit me to assist in providing the information sought.

I trust that Mr Hamilton will understand that position.

Yours faithfully

Duncan Hamilton

Duncan Hamilton
Advocate

[REDACTED]

duncanhamilton@amadvocates.co.uk

Arnot Manderson Advocates, Parliament House, Edinburgh, EH1 1RF t: [REDACTED]

[REDACTED] www.amadvocates.co.uk

From: "[REDACTED] [REDACTED]@gov.scot" <[REDACTED] [REDACTED]@gov.scot>
Date: Wednesday, 25 November 2020 at 09:21
To: DUNCAN HOME <duncanhamilton@amadvocates.co.uk>
Subject: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear Duncan Hamilton,

Please see attached correspondence from James Hamilton, independent advisor on the Ministerial Code.

In order to ensure that the current Covid restrictions do not delay this correspondence, it has been sent by email in the first instance. A duplicate hard copy will also be sent by post.

Best wishes,

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code |
Please contact me on Skype or on [REDACTED]

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Meeting with Mr Salmond

From: [REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Thu, 04 Mar 2021 16:35:19 +0000

Hi James,

Quick heads up that Mr Salmond has forwarded the calendar request to [REDACTED] a close associate of his who was a media expert for the SNP. I don't think that we can realistically ask him not to bring someone along (I assume [REDACTED] is acting effectively as support to Mr Salmond, which we had said was ok in the joining instructions) but wanted you to be aware as I think it significantly increases the risk the discussion will be leaked.

Best wishes,

[REDACTED]

RE: Terms of reference

From: [REDACTED] <[REDACTED]@gov.scot>
To: [REDACTED]
Date: Thu, 04 Mar 2021 16:03:39 +0000
Attachments: Remit PQ for sharing.docx (17.93 kB)

Dear [REDACTED]

Thank you for your email. The remit for Mr Hamilton's investigation was published in response to PQ S5W-31054. I have attached a copy of the PQ, and PQ answer, to this email.

I hope this information is helpful.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 04 March 2021 14:17
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Terms of reference

Dear [REDACTED]

I shall be grateful if you will end me the terms of reference for the present inquiry Mr. Hamilton is making into complaints that the First Minister has breached the Ministerial Code.

My reason is that I wish to pursue a complaint that she has breached the code. I do not, however, wish to submit this to Mr. Hamilton if it does not come within his remit, hence the reason for my request.

[REDACTED]

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Question S5W-31054: Clare Adamson, Motherwell and Wishaw, Scottish National Party, Date Lodged: 03/08/2020

To ask the Scottish Government whether it will provide an update on progress with the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019.

Answered by John Swinney (03/08/2020):

In my response to S5W-21344 on 31 January 2019, I advised Parliament that the Ministerial Code referral had to be paused to avoid any risk of prejudice to live criminal proceedings. Since the conclusion of those proceedings, the attention of the Government has been focussed on leading Scotland's response global health emergency. In light of the progress that has been made we are now able to re-commence the referral.

The referral will be led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

Mr Hamilton will now proceed with the referral and report as soon as he is able. The report will be published in line with the terms of the remit.

The remit for the referral is as follows:

Ministerial Code Referral: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Current Status: Initiated by the Scottish Government. Answered by John Swinney on 03/08/2020

Re: Terms of reference

From: [REDACTED]
To: [REDACTED] <[REDACTED].[REDACTED]@gov.scot>
Date: Thu, 04 Mar 2021 16:05:36 +0000

Dear [REDACTED]

Thank you very much for being so helpful. I shall not bother Mr. Hamilton if my complaint is not relevant to his terms of reference.

Best wishes
[REDACTED]

-----Original Message-----

From: [REDACTED] <[REDACTED]@gov.scot>
To: [REDACTED]
Sent: Thu, 4 Mar 2021 16:03
Subject: RE: Terms of reference

Dear [REDACTED]

Thank you for your email. The remit for Mr Hamilton's investigation was published in response to PQ S5W-31054. I have attached a copy of the PQ, and PQ answer, to this email.

I hope this information is helpful.

Best wishes,
[REDACTED] [REDACTED]

From: [REDACTED]
Sent: 04 March 2021 14:17
To: [REDACTED] <[REDACTED].[REDACTED]@gov.scot>
Subject: Terms of reference

Dear [REDACTED]

I shall be grateful if you will end me the terms of reference for the present inquiry Mr. Hamilton is making into complaints that the First Minister has breached the Ministerial Code.

My reason is that I wish to pursue a complaint that she has breached the code. I do not, however, wish to submit this to Mr. Hamilton if it does not come within his remit, hence the reason for my request.

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RE: Correspondence from Mr Hamilton [UNSCANNED]

From: [REDACTED] <[REDACTED]@gov.scot>
To: Alex Salmond [REDACTED]
Date: Thu, 04 Mar 2021 09:09:26 +0000

Dear Alex,

I think Friday at 3pm would work well. I will just double check Mr Hamilton's diary hasn't change since yesterday and then issue a meeting request and confirm the times.

Best wishes,

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 03 March 2021 23:36
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

Might Friday afternoon be suitable, at say 3pm?

Best wishes

Alex

Sent from my iPad

On 3 Mar 2021, at 22:02, [REDACTED] <[REDACTED]@gov.scot> wrote:

Dear Alex,

Further to our emails earlier in the week, would tomorrow afternoon or sometime on Friday be suitable for a meeting with Mr Hamilton?

Best wishes,

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 02 March 2021 09:46
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

Thank you for your email.

That's absolutely fine and perfectly understandable.

I look forward to hearing from you with a rescheduled date towards the end of the week.

Best wishes

Alex

Sent from my iPad

On 2 Mar 2021, at 09:31, [REDACTED]@gov.scot wrote:

Dear Alex,

Apologies for the barrage of emails on this, events seem to keep overtaking the arrangements we make for this meeting. As I'm sure you are aware, the Scottish Government has now agreed to provide the Parliamentary Committee with key legal advice provided to SG during the Judicial Review. I understand this will take place as soon as possible this week.

Given the relevance of this to your discussion with Mr Hamilton, Mr Hamilton wants to be able to consider this material before you meet. Mr Hamilton has therefore asked that we cancel the meeting today and reschedule for later in the week if that would be ok with you?

Happy to discuss. My phone number is [REDACTED] if it would be easier to discuss over the phone.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 01 March 2021 17:38
To: 'Alex Salmond' [REDACTED]
Subject: RE: Correspondence from Mr Hamilton [UNSCANNED]

Dear Alex,

As far as I can see, the timings for the evidence session tomorrow haven't been published yet. I wondered therefore if we should arrange the meeting with Mr Hamilton for 3pm tomorrow, and if the times for the Committee overlap with it then we can rearrange if needs be. Would that be ok?

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 01 March 2021 10:13
To: 'Alex Salmond' [REDACTED]
Subject: RE: Correspondence from Mr Hamilton [UNSCANNED]

Dear Alex,

Tuesday afternoon would be good for Mr Hamilton as well, and I agree it would make sense to finalise things once the timings for the Committee evidence session are published. I will keep an eye on the Parliament website and be in touch later today.

I've attached some short joining instructions which set out some of the practical arrangements around videoconferencing and similar. Happy to discuss any aspect of the arrangements or to organise a quick test of the software.

Best wishes,

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 28 February 2021 23:54
To: [REDACTED]; [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

Thank you for your email.

Tuesday is fine for a meeting. Can I suggest sometime in the afternoon? I understand the Lord Advocate is giving evidence to SGHHC Committee on Tuesday and I would like to watch that evidence in advance of our meeting.

If that suits Mr Hamilton's diary, can we finalise a time for Tuesday, tomorrow, once the timing of the Lord Advocate's evidence session is published?

Best wishes and thank you

Alex

Sent from my iPad

On 27 Feb 2021, at 14:01, [REDACTED] [REDACTED]@gov.scot wrote:

Dear Mr Salmond,

Many thanks for your email. I've checked with Mr Hamilton about his availability on Monday and Tuesday. He has another commitment on a different project which will include various video conferences; the timetable for this has now been confirmed and all the meetings are due to take place on Monday. Mr Hamilton would therefore prefer to meet on Tuesday if that would be possible.

Mr Hamilton watched the evidence you gave to the Parliament yesterday, so is aware of the relevant content covered in that discussion, but if there are sections of your evidence you would like to draw his attention to before the meeting then let me know.

Mr Hamilton is happy for you to cover in the meeting any matters related to the Ministerial Code that you did not get opportunity to include in your evidence to the Committee. In terms of specific questions, Mr Hamilton would be interested in hearing more detail on the suggestion that failing to settle the judicial review constitutes a breach of the Ministerial Code.

If it would be helpful to arrange a short technical test in advance of the meeting to check the video conferencing arrangements work ok, I would be happy to facilitate this.

Best wishes,

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 27 February 2021 01:50
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

I note from one of your earlier emails in the exchanges below that Mr Hamilton is free on Monday 1st March and if that is more convenient for him, I'm available for a video call from 4.30pm onwards.

Might that be suitable?

I will be filming earlier that day and will accordingly have access to a better signal for the video call!

Please kindly let me know if that works for Mr Hamilton.

Thank you for your kind help with arranging this.

Alex

Sent from my iPad

On 26 Feb 2021, at 10:14, [REDACTED] <[REDACTED]@gov.scot> wrote:

Dear Mr Salmond,

Many thanks. Mr Hamilton would be happy to meet on Tuesday.

Are there any particular times on Tuesday that would be best for you? Mr Hamilton has a couple of other meetings on Tuesday, the schedule for which should be finalised later today. Once that is settled I can compare against your availability and suggest some specific times for the meeting.

Best wishes,

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 25 February 2021 11:04
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

Yes they have! Would Tuesday next week be of use to Mr Hamilton. Unfortunately I am filming on Monday but let me know. It is possible I could find a gap late afternoon/early evening on Monday if we can agree a time with a just a wee bit of flexibility.

Best Wishes

Alex Salmond

Sent from my iPad

On 25 Feb 2021, at 10:19, [REDACTED]@gov.scot wrote:

Dear Mr Salmond,

With apologies for contacting you again, as I understand that your plans for this week have changed for reasons beyond your control, I just wanted to check if you were able to provide any update on your availability early next week for a discussion with Mr Hamilton? Mr Hamilton would also be happy to arrange a call over the weekend if that would work for you.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 22 February 2021 11:25
To: 'Alex Salmond' [REDACTED]
Subject: RE: Correspondence from Mr Hamilton [UNSCANNED]

Dear Mr Salmond,

Many thanks for your email. I have now had an opportunity to discuss this with Mr Hamilton.

Mr Hamilton is available on Friday afternoon from 3.30 pm onwards, but would also be free on Monday 1 March if you are available then? Whilst Mr Hamilton is keen to meet as soon as can be arranged, he is also aware that you may be giving evidence to the Parliamentary Committee this week and would ideally like to watch and consider your evidence to the Committee before he discusses things with you.

In terms of the practical arrangements, we have been using Cisco Webex for video calls. As well as Mr Hamilton, a member of the secretariat would attend the call to take notes and provide technical support if needed. In order for an accurate record of the conversation to be produced, the call would be recorded using the in-app recording function, and then transcribed. Once the transcript is agreed by attendees, the video would then be destroyed. I can send through more detailed information on this, but wanted to check if you were content with these general arrangements.

Happy to discuss.

Best wishes,

[REDACTED]
[REDACTED] | Secretariat to the Independent Advisor under the
Ministerial Code | Please contact me on Skype or on [REDACTED]

From: Alex Salmond [REDACTED]
Sent: 20 February 2021 01:54
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

Happens to me all the time.

Looking at the terms of Mr Hamilton's letter could you also confirm to him that I would like to speak with him by video on my evidence. If it were suitable for Mr Hamilton I would be free on Friday next, 26th February.

Yours for Scotland

ALEX SALMOND

Sent from my iPad

On 19 Feb 2021, at 19:23, [REDACTED] <[REDACTED]@gov.scot> wrote:

Dear Mr Salmond,

Apologies, I hadn't seen anything come in earlier. I have now checked the obvious things that could have gone wrong, and found that for some bizarre reason your email had gone into my junk mail folder despite our previous correspondence.

Please accept my apologies for this- I will forward your email from this morning to Mr Hamilton now.

Best wishes,

From: Alex Salmond [REDACTED]
Sent: 19 February 2021 17:24

To [REDACTED] [REDACTED]@gov.scot>

Subject: Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

Has this letter crossed with my email?

I sent the answers this morning with a note and two appendices.
Could you let me know you have received everything.

Best Wishes

Alex Salmond

Sent from my iPad

On 19 Feb 2021, at 17:18, [REDACTED] [REDACTED]@gov.scot wrote:

Dear Mr Salmond,

Please see attached correspondence from Mr
Hamilton.

Best wishes,

[REDACTED]

From: [REDACTED]

Sent: 12 February 2021 12:40

To: 'Alex Salmond' [REDACTED]

Subject: RE: Correspondence from Mr Hamilton

Dear Mr Salmond,

Thank you for your response. I have passed this to Mr
Hamilton, who is happy that you provide written
statements to the supplementary questions. However,
if you would like to discuss matters Mr Hamilton would
also be happy to arrange a video interview.

Best wishes,

[REDACTED]

From: Alex Salmond [REDACTED]
Sent: 11 February 2021 09:56
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton

Dear [REDACTED]

Thank you for your note. I enclose a reply to Mr Hamilton.

Best Wishes

Alex Salmond

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

11th February 2021

Dear Mr Hamilton

Thank you for your letter of 9th February.

If I may I shall reply within a few days when I have the opportunity to consult my notes. In addition, in preparing evidence for the Parliamentary Inquiry, I have come across some further documentary corroboration for points which I have already made.

I will be happy to send you this material along with the answers to your questions and provide a video interview as well if required.

Yours for Scotland

Rt Hon Alex Salmond

Sent from my iPad

On 9 Feb 2021, at 17:03, [REDACTED] <[REDACTED]@gov.scot> wrote:

Dear Mr Salmond,

Please see attached correspondence from Mr
Hamilton.

Best wishes,

████████████████████

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<Correspondence for Alex Salmond- 9 Feb 2021.docx>

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<Salmond letter Feb 19 2021.docx>

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RE: Correspondence from Mr Hamilton

From: [REDACTED] <[REDACTED]@gov.scot>
To: Geoff Aberdein [REDACTED]
Date: Thu, 04 Mar 2021 17:56:36 +0000
Attachments: Video Interview- joining instructions.docx (15.11 kB)

Hi Geoff,

I've attached some short joining instructions for tomorrow- I think this has been covered in previous emails but wanted to make sure I had sent it for completeness.

Best wishes,

[REDACTED]

From: Geoff Aberdein [REDACTED]
Sent: 04 March 2021 13:21
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton

Arrived and accepted! Thank you.

From: "[REDACTED] <[REDACTED]@gov.scot>" <[REDACTED]@gov.scot>
Date: Thursday, 4 March 2021 at 13:18
To: [REDACTED]
Subject: RE: Correspondence from Mr Hamilton

Hi Geoff,

No problem at all. Now showing my own technological incompetence- I *think* I've sent the invite on to your other email address but the process seemed deceptively simple so let me know if it doesn't arrive.

Best wishes,

[REDACTED]

From: Geoff Aberdein [REDACTED]
Sent: 04 March 2021 13:11
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton

[REDACTED]

Can you resend that invite to [REDACTED] please.

I accepted but can't seem to find it anywhere! Technology has never been my strong point.

Geoff

From: "[REDACTED] [REDACTED]@gov.scot" <[REDACTED] [REDACTED]@gov.scot>
Date: Thursday, 4 March 2021 at 10:33
To: [REDACTED]
Subject: RE: Correspondence from Mr Hamilton

We could do 2pm today if that would work for you, though I understand that would cut into your prep time for the 3pm meeting. Alternatively, would 11am tomorrow work?

From: Geoff Aberdein [REDACTED]
Sent: 04 March 2021 10:25
To: [REDACTED] <[REDACTED] [REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton

Apologies but I have a meeting with the UK Government on the Budget that has just gone in to my diary at 3pm.

Tomorrow before 1pm?

From: "[REDACTED] [REDACTED]@gov.scot" <[REDACTED] [REDACTED]@gov.scot>
Date: Thursday, 4 March 2021 at 09:55
To: [REDACTED]
Subject: RE: Correspondence from Mr Hamilton

Hi Geoff,

Would a webex call at 3pm today be ok?

Best wishes,

[REDACTED]

From: Geoff Aberdein [REDACTED]
Sent: 04 March 2021 07:40
To: [REDACTED] <[REDACTED] [REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton

Hi [REDACTED]

I can do a zoom interview this afternoon 1400-1600 or tomorrow morning between 1000-1200.

Geoff

From: "[REDACTED] [REDACTED]@gov.scot" <[REDACTED] [REDACTED]@gov.scot>
Date: Monday, 1 March 2021 at 17:19
To: [REDACTED]
Subject: Correspondence from Mr Hamilton

Dear Mr Aberdeen,

Please see attached correspondence from Mr James Hamilton.

Best wishes,

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Video Interview with James Hamilton, Independent Advisor on the Ministerial Code

Thank you for agreeing to participate in a video interview with James Hamilton, Independent Advisor on the Ministerial Code.

These joining instructions explain key aspects of how the interview will be conducted.

The time and date of the relevant interview has been agreed, and a calendar request created.

Video Conferencing

The current lockdown arrangements make it legally mandatory for work to be done at from home where possible; in addition, travel restrictions relating to domestic and international travel are in place. For these reasons, the interviews will be conducted via videoconference, using Cisco Webex.

This software allows video and audio conferencing, and can be accessed via Scots, Microsoft and Apple devices.

Participants can participate in the meeting as a guest, or create a Cisco Webex account to access the meeting. Instructions on how to do this can be found here: <https://cart.webex.com/sign-up-webex>

The secretariat will arrange a test of the videoconferencing arrangements before each interview.

Attendees

Attendees may bring a companion to the meetings, e.g. from a trade union if they are a member.

A member of the secretariat will attend the meetings, to ensure the meeting progresses smoothly, and to ensure the recording of the meeting.

Recording of the meeting

An audio recording of the meeting will be taken. The secretariat will also take notes.

The secretariat will use the recordings to produce a transcript of the meeting. The transcript will be shared with the participant within 10 working days of the meeting.

Once the transcript is agreed, the audio recording will then be destroyed.

RE: Correspondence from Mr Hamilton

From: [REDACTED]@gov.scot>
To: Geoff Aberdein [REDACTED]
Date: Thu, 04 Mar 2021 09:22:38 +0000

Hi Geoff,

Many thanks. I am checking with Mr Hamilton whether a call this afternoon would work and will get back to you asap.

We have been using Cisco Webex for the video calls, as that allows recording of the discussion, and then I can transcribe it without involving any external party. Once the transcript has been produced the recording would be destroyed. Would that be ok with you?

Happy to discuss. My mobile number is [REDACTED]

Best wishes,

[REDACTED]

From: Geoff Aberdein [REDACTED]
Sent: 04 March 2021 07:40
To: [REDACTED]@gov.scot>
Subject: Re: Correspondence from Mr Hamilton

Hi [REDACTED]

I can do a zoom interview this afternoon 1400-1600 or tomorrow morning between 1000-1200.

Geoff

From: "[REDACTED]@gov.scot" <[REDACTED]@gov.scot>
Date: Monday, 1 March 2021 at 17:19
To: [REDACTED]
Subject: Correspondence from Mr Hamilton

Dear Mr Aberdein,

Please see attached correspondence from Mr James Hamilton.

Best wishes,

[REDACTED]

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From: [REDACTED]
Sent: 04 March 2021 12:01
To: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [REDACTED]
[REDACTED]
[REDACTED]
Cc: [REDACTED] <[REDACTED]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED]
[REDACTED]
[REDACTED]
Subject: RE: Ministerial Code Advisor- Indemnity

Hi Jackie,

Thanks, and no problem for the delay- we want to ensure this is done properly. I have talked to Mark about a way forward on this, and will update the sub once we have had some further discussions.

Best wishes,

[REDACTED]

From: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>
Sent: 04 March 2021 10:46
[REDACTED]
[REDACTED]
[REDACTED]
Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED]
[REDACTED]
[REDACTED]
Subject: RE: Ministerial Code Advisor- Indemnity

All

Sorry for the delay in responding, I have been discussing with colleagues. I think the conclusion is that if the maximum exposure exceeds £300k then Parliament should be notified of this.

Grateful if the submission could be updated to be clear on this.

Thanks

Jackie

From: [REDACTED]
Sent: 03 March 2021 10:26
To: [REDACTED] McAllister JM (Jackie)
<Jackie.Mcallister2@gov.scot>; [REDACTED]
[REDACTED]
[REDACTED]
Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED]
[REDACTED]
[REDACTED]
Subject: RE: Ministerial Code Advisor- Indemnity

[REDACTED]

You have given the trail and Jackie can pick up the answer to her question which was about getting approval not notifying Parliament.

[REDACTED]

From: [REDACTED]
Sent: 03 March 2021 10:15
To: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>; [REDACTED]
[REDACTED]
[REDACTED]
Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>; [REDACTED]

Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>;

[REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: Ministerial Code Advisor- Indemnity

Hi Jackie,

No problem at all. I've attached the email trail in which this was discussed between [REDACTED] finance.

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: McAllister JM (Jackie) <Jackie.Mcallister2@gov.scot>

Sent: 02 March 2021 22:07

To: [REDACTED]

[REDACTED]

Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>; [REDACTED]

Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>;

[REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: Ministerial Code Advisor- Indemnity

[REDACTED]

I agree with [REDACTED] on the reasonableness of this request. I would however just like to better understand the advice that [REDACTED]

[REDACTED]

[REDACTED]

Regards

Jackie

[REDACTED]

[REDACTED]



From: [REDACTED]
Sent: 02 March 2021 10:42
To: [REDACTED] McAllister JM (Jackie)
<Jackie.Mcallister2@gov.scot>; [REDACTED]
[REDACTED]
Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>; [REDACTED]
Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>;
[REDACTED]
[REDACTED]
[REDACTED]
Subject: Ministerial Code Advisor- Indemnity

Dear [REDACTED] Jackie,

I am currently acting as secretariat to Mr James Hamilton, who is the independent advisor on the Ministerial Code and is undertaking work on the First Minister's self-referral under the Ministerial Code.

The independent advisor has asked for an indemnity. This seems reasonable, as the Independent Advisor role is unpaid, and similar provision (e.g. under paragraph 18 of the SPFM) is made for those undertaking other similar roles.

On that basis, I have worked with colleagues in [REDACTED] Finance to develop the attached submission which sets out a suggested approach to providing an indemnity, taking into account the various [REDACTED] issues, and the expected likelihood of the indemnity being called upon. This includes a letter, to issue from the DFM to Mr Hamilton, which would confirm the approach.

Given that this has [REDACTED] finance implications, David Rogers has asked that the relevant directors in [REDACTED] Finance also sign off this submission and that a note of this be included in the submission. Would you be able to consider the attached submission and letter and let me know if you are content, by 10am tomorrow if possible? Once I have received any comments I will tidy up the tracked changes and comments in the document.

Happy to discuss.

Best wishes,

[REDACTED]

From: Fee Rendering [REDACTED]
Sent: 05 April 2021 18:47
To: [REDACTED]
Cc: [REDACTED]
Subject: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Dear Sir/Madam,

Please find attached a fee note for work undertaken by Douglas Ross Q.C. relating to:

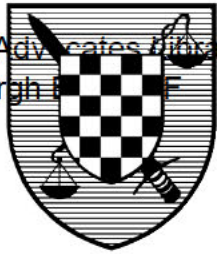
Case Title: Ministerial Code Referral
Case ID: 203976
Client: Mr James Hamilton
Case Type: CIVIL NON LEGAL AID
Your ref:

Kind regards,
Faculty Services Ltd

For further detail of payment terms please refer to The Scheme for Accounting for and Recovery of Counsels Fees which can be found [here](#)

Fee enquiries to: [REDACTED]
Payment enquiries to: [REDACTED]
Credit Control enquiries to: [REDACTED]

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FEE NOTIFICATION

2. (Proposed Fee)

DX: 557000ED20
THE SCOTTISH
GOVERNMENT SGLD
FINANCE UNIT
AREA GB-06
VICTORIA QUAY
EDINBURGH

Date of Issue 05/04/2021
Case ID 203976
Fee Note No. INV/DR-R27X202

P/O Number
SG9

78676

Page 1 of

1

Case Ministerial Code Referral
Client Mr James Hamilton
Payment Deferred No
Contact Name Rebecca Whyte
Advocate Douglas Ross Q.C.

Case Type CIVIL NON LEGAL AID
Deferment Period No Deferment
Contact Ref
Vat Reg No 716 8060 37

Date	Description	Amount	Vat%	Vat
18/03/2021	[REDACTED]	£7,500.00	20.0%	£1,500.00

VAT SUMMARY
20.0% (FEE) Amount: £7,500.00, VAT: £1,500.00

Total Fees	£7,500.00
Total VAT	£1,500.00
Total Due	£9,000.00

[Tear-Off]

PAYMENT REMITTANCE - [Payment will be accepted by Cheque, Bank Transfer or Card (excl. Amex)]

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BACS payment to:

Case ID: 203976 Fee Note No.: INV/DR-R27X202

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Bank of Scotland
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Account: 00373977
IBAN: GB67B0FS 8002 2400 3739 77
BIC/SWIFT: BOFSGB21216

Fee Total £9,000.00

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Printed on
05/04/2021 by:
Douglas Ross
Q.C.

From: [REDACTED]
Sent: 08 April 2021 13:36
To: Supplier Prompt Payment [REDACTED]; AP & Vendor Maintenance
[REDACTED]
Cc: [REDACTED]
Subject: FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID
Importance: High

Good Afternoon

PO: SG1004530

Please associate this PO with the attached invoice. This has been receipted today.

Many thanks, [REDACTED]

[REDACTED] **Scottish Government | Cabinet, Parliament and Governance Division | Tel:** [REDACTED]
I email: [REDACTED]

From: Fee Rendering [REDACTED]
Sent: 05 April 2021 18:47
To: [REDACTED]
Cc: [REDACTED]
Subject: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Dear Sir/Madam,

Please find attached a fee note for work undertaken by Douglas Ross Q.C. relating to:

Case Title: Ministerial Code Referral
Case ID: 203976
Client: Mr James Hamilton
Case Type: CIVIL NON LEGAL AID
Your ref:

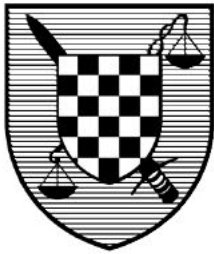
Kind regards,
Faculty Services Ltd

For further detail of payment terms please refer to The Scheme for Accounting for and Recovery of Counsels Fees which can be found [here](#)

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THE SCOTTISH GOVERNMENT
SGLD FINANCE UNIT
AREA GB-06
VICTORIA QUAY
EDINBURGH

Date of Issue 05/04/2021
Case ID 203976
Fee Note No. INV/DR-R27X202
P/O Number
SG97
8676 Page
1 of 1

Case Ministerial Code Referral
Client Mr James Hamilton
Payment Deferred No
Contact Name [REDACTED]
Advocate Douglas Ross Q.C.

Case Type CIVIL NON LEGAL AID
Deferment Period No Deferment
Contact Ref
Vat Reg No 716 8060 37

Date	Description	Amount	Vat%	Vat
18/03/2021	[REDACTED]	£7,500.00	20.0%	£1,500.00

VAT SUMMARY
20.0% (FEE) Amount: £7,500.00, VAT: £1,500.00

Total Fees	£7,500.00
Total VAT	£1,500.00
Total Due	£9,000.00

[Tear-Off]

PAYMENT REMITTANCE - [Payment will be accepted by Cheque, Bank Transfer or Card (excl. Amex)]

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BACS payment to:

Case ID: 203976 Fee Note No.: INV/DR-R27X202

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Fee Total £9,000.00

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From: Douglas Ross [REDACTED]
Sent: 09 April 2021 15:21
To: [REDACTED]@gov.scot>
Subject: RE: Ministerial code referral

Dear [REDACTED]

All noted, thanks.

[REDACTED]

Have a good weekend.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: 07739 639257
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED]@gov.scot>
Sent: 09 April 2021 11:45
To: Douglas Ross [REDACTED]
Subject: Ministerial code referral

Dear Douglas,

Apologies for the delay in getting in touch- I had intended to send this before I went on leave for Easter but didn't manage to get through everything I hoped to. Hope you are well and that you had a good Easter weekend.

I just wanted to get in touch to confirm that there is no further legal work needed on the ministerial code referral as the report has been published, and to say thank you for all the work you have done on the referral.

There's also a couple of things about next steps that I thought it would be worth highlighting. As part of the document retention policy for the referral, a number of documents, including those setting out how the investigation was conducted and how the report was developed, will be transferred to National Records of Scotland (NRS). As part of the process of transfer, records will be assessed for sensitivity and any legal constraints on inspection or release of the material identified. Any records which are assessed as sensitive will be marked as not for public inspection for at least 15 years depending on the specific reasons they have been assessed as sensitive. Information marked as sensitive may still be subject to release under FOISA in some circumstances.

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

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From: [REDACTED]
Sent: 05 January 2021 14:42
To: James Hamilton <[REDACTED]>
Subject: RE: Meeting with FM

That sounds good. I will remove that from the letter and send over another draft.

From: James Hamilton <[REDACTED]>
Sent: 05 January 2021 14:34
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Meeting with FM

Sure, say 10.00 am?

Btw , the answer to my mediation question is in the documents you sent, in correspondence from AS lawyers, so there is no need for him to give any further information.

J

On Tue 5 Jan 2021 at 14:30 <[REDACTED]@gov.scot> wrote:
Hi James,

Would first thing tomorrow work?

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@gmail.com>
Sent: 05 January 2021 13:30
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Meeting with FM

Hi [REDACTED]

We might discuss this on the phone.

James

On Tue, 5 Jan 2021 at 13:14, <[REDACTED]@gov.scot> wrote:
Hi James,

We have a meeting with the FM provisionally scheduled for 3pm on 13th January. I have looked back at the paper I had prepared for arrangements for this and just wanted to check a few things so I can finalise arrangements.

- would you like the interview to be telephone or video?
- we had intended to record the interview- is that still ok?
- would you like to share a list of questions in advance?
- would you like Mr Ross to be present?
- would you like Mr Ross to look at the questions before the interview?

Best wishes,



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From: [REDACTED]
Sent: 05 February 2021 15:31

To: James Hamilton [REDACTED]

Subject: Transcripts

Hi James,

As discussed yesterday, please see attached transcripts of the interviews with Liz Lloyd and FM. These are password protected as before.

Best wishes,

[REDACTED]

Interview with the First Minister, 1/2/2021

Attendees

James Hamilton, Independent Advisor under the Ministerial Code

Nicola Sturgeon, First Minister

[REDACTED], Secretariat to the Independent Advisor under the Ministerial Code

Meeting transcript

JH: Thank you for agreeing to participate in this interview. As you know, I am conducting an investigation into the First Minister's self-referral under the Ministerial code concerning meetings between the First Minister and Alex Salmond in 2018.

Thank you for the written statement you have provided. I have used the information in this, and other statements I have received, to develop a list of further questions I would like to discuss with you.

[REDACTED], who provides secretariat support to the investigation, will also be present during the interview to take notes and to provide practical and technical support if required.

The meeting will also be recorded, so that a transcript of the conversation can be produced. This will be shared with you as a record of the discussion, and once the transcript is agreed the recording will be destroyed.

In producing my report, I may find that I need to refer to the information you provide. I will be taking appropriate action to ensure that my report is compliant with any relevant court order.

Do you have any questions about the process, or how the information you provide will be used?

In that case, let us turn to the main part of the discussion.

FM: No, the only thing I would have drawn attention to you have already alluded to that clearly there are court orders in force here that limit the ability to freely publish or talk openly about some aspects of this, but I know you are fully aware of that and I will not let that inhibit anything I say to you, and leave it to your judgement as to what can be quoted and what can't.

JH: Yeah, well what I will be doing in practice is running it past a Scottish counsel to ensure that, because obviously somebody who is familiar with the legal system in Scotland needs to look at it, so that's my intention.

[REDACTED]

FM:

[REDACTED]

[REDACTED]

[REDACTED]

JH:

[REDACTED]

FM: No more than that, but it was a lingering concern. Roundabout the beginning of November 2017, just to put you in the picture as you will recall this was, at the time the whole world really was talking about the “me too”, allegations, and you know organisations, governments, parliaments everywhere were trying to make sure they

had the right processes in place. And this was roundabout the time we got a query from Sky News, by "we" I mean the SNP not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it, you know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query, he seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I'm not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I'm about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornets nest had been stirred kind of thing. That was the impression I got. And then he said something to me about you know, you can't have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said "oh no, that's not to say that I think there is anything there. But it was just the combination of things left me with a "is there something that is about to come forward about Mr Salmond's behaviour?" It wasn't something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

JH: And then on the 29th of March, Mr Aberdein was in the office, I think there was some kind of party or somebody was having a birthday or something of that sort.

FM: [REDACTED], from my memory of this, and my recollection of this, I've tried very hard to get as clear a recollection, it is not the clearest recollection because the 29th of March, for you know reasons we may come on to, has never really been a significant event in my mind. [REDACTED]

[REDACTED]. One of our colleagues, it was her 60th birthday, somebody that Geoff had worked closely with and I think it was he might be in, he was going to try to make it in for the birthday cake celebration and if so he might try to grab a word with me. And that is what happened.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FN: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on the 2nd April which we will come on to, make me very firm to the best of my recollection. Remember, this 29th of March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it [REDACTED]

[REDACTED] But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

JH: and you've described how he told you what the complaints were about? That you were shocked at that meeting, but you hadn't know the details before that?

FM: I didn't know. I suspected it was some kind of complaint about sexual misconduct, but the nature and the detail of that, and I can take you through. I should be candid with you..

JH: No I don't want to know and I don't need to know I don't think because.

FM: No, not the detail of the complaints but how, I was going to be candid with you, I have read Mr Salmond's submission to you, because it had been widely report, and

published on the internet, and his sort of suggestion that he turned up at my house on the 2nd of April and everybody knew exactly what we were about to discuss neither aligns with what he said previously, nor in my view with what actually unfolded in my house, which not the detail but you know the generality of that I'm happy to go in to as much detail as you want.

JH: And at that meeting, I think he asked you to intervene in relation to the matter, in relation to the internal complaints which were being dealt with?

FM: Well, firstly he showed me, so he, when he arrived at my house he first of all asked to see me privately away from the others, which again..

JH: which you did?

FM: Which we did. Again, he's saying we all knew exactly what it was about. He asked to see me privately and as he was telling me what the nature of this was, I didn't know this at the time but I found out shortly later that Geoff and the other individual there was taking Liz through the same detail. He showed me the letter that he had received from the Permanent Secretary, asked me to read it. I was deeply profoundly shocked by what I read, and he then he gave me his account, and I'm not going to get into detail but his account of it, and you know he denied part of what was alleged, but his account shocked me too, because in my view it was an account of something that was deeply inappropriate and it shocked me deeply at the time. And you know I will remember that sense of shock for a long time.

JH: And you've said in your statement that it was clear to him at the end of the discussion you had that you were not going to intervene as he requested you to?

FM: I absolutely hope it was clear, it was certainly clear in my mind I was not going to intervene. I would ask you, I suppose, to remember this, I was sitting here with somebody, just to be clear, that has been closer to me for all my adult life than anybody other than my parents. He was very agitated and upset. I was, I felt angry, based on what I had been told, but I was also feeling upset and sympathy for him. But yeah, I was clear in my own mind, and I hope I was clear was him I was not going to intervene in what was a process that I was not even meant to know about at that stage, let alone have any involvement in.

JH: I think that from his own statement there's quite an agreement between the two of you actually as to what was discussed, and his anger seems to be directed actually at the fact that you wouldn't intervene with anything else, as I understand it. Obviously his interpretation differs from yours, but that's the way I read it. With hindsight, do you think it would have been wiser for you, having made it clear you were not going to intervene, not to have further meetings and telephone conversations with him?

FM: With hindsight, Mr Hamilton, I wish I had never had any discussion with him about it because it has caused me nothing but pain and grief and you know difficulty. But I didn't intend, after that meeting, to have any further discussions with him about it. He then contacted me again, asked me to inform the Permanent... and again, this is somebody who is very close to me, he called me, asked to speak to me. Always at the back of my mind was the view that or the belief that at any point.. Alec is

somebody that likes to take control of situations and it was always at the back of my mind that at any moment he might decide to go public on this, and proclaim his innocence, and say he was fighting to clear his name. And when he was trying to speak to me that was always “is that what he is going to tell me?” So when he contacted me again, turned out it wasn’t what he was going to tell me, and he wanted me to tell the Permanent Secretary I knew and ask her to accede to his request at that time for a process of mediation, and I told him flatly I wouldn’t do that. And you know he wasn’t, he didn’t take that particularly well. I then, later, when he next contacted me that was the point at which it was very clear the he was not just talking about taking legal action against the Government in sort of theoretical terms but was very seriously considering that. That was the point at which I decided, notwithstanding my reasons for not telling anyone in government up to that point, which again I’m happy to go through, at that point I had to tell the Permanent Secretary that that was what I was saying to him.

JH: You’ve explained in your written statement, and I can understand what you are saying there. I mean, was your main reason for seeking him and speaking to him on the telephone on those other occasions, you mentioned at one stage, being afraid of being blindsided and worried that he might do something, resign or whatever? Was that the sole motivation?

FM: Yes, I mean I ...

JH: He seems to be suggesting that you did give him some kind of reason to think that you were thinking about mediation or you know considering his requests et cetera?

FM: So there was, sorry, I interrupted you. I will come on to a point where he seemed to think that I was expressing a view within Government at that point about arbitration. But my motivation, yes, was I have had a residual, you know, he was a friend, colleague, very close to me, he was, and I’m a human being, I guess there was a residual sort of sense of not wanting a complete breakdown in our relationship.

JH: Sure.

FM: But the main motivation was as party leader. I had never any intention of intervening as First Minister, I would not have done that, and I think as you say he is, that’s why he is so angry at me I think because I didn’t do that. But my motivation for speaking to him on the 7th of June, which was after I told the Permanent Secretary, we were about to have a party conference and I thought he might be trying to corner me informally, so I decided to tell him that I told the Permanent Secretary and again reiterate I wasn’t going to intervene. After that, yes, it was “was he going to do something public?” that might lead to the whole thing going public. At the last meeting I had with him, in mid-July, he at that point said to me he believed that was the government, he was seeking a process of arbitration. He had started on mediation and gone on to arbitration. And he had formed a belief, which to this day I don’t understand how, whether he was just saying this to try to prompt me to get involved or whether it had come from somewhere, but he had formed a belief that I was the one blocking agreement to arbitration, and that was just not the case. I was

not expressing any view because I wasn't involved in the decision making. I told the Permanent Secretary that he has that belief because I didn't want any misapprehension that I was trying to influence something that I didn't have involvement in. And then I spoke to him for the last time, a few days after that, on the telephone where I was trying to be very clear with him that I didn't think this arbitration- not because I had any involvement in it, because all along my view was, rightly or wrongly, whatever he was contesting about the allegations made against him he was, to me, conceding something very serious and I thought he should engage with the substance not just try to find a procedural way of making it all go away and that's what I was trying to communicate to him, I think, on the, in the last phone call.

JH: But he seems to have taken the view that this was a trick to try and get him into a process that would undermine his judicial review proceeding.

FM: I mean, I read that in the submission to you and what he had, he gives the impression that that was the first time I said that to him and that this was somehow something that the Permanent Secretary and I had cooked up, and it is just nonsense, and what he omits to say is that I had expressed this view to him, to the extent that I was giving him any sort of opinion on this, that- this was not a situation where he was saying this is all just a pack of nonsense and there's no truth in any of this, he was admitting to me something that was in my view deeply inappropriate and a gross abuse of his power as First Minister, and I thought he should engage with the substance of it. The mediation, the arbitration, you know, he will talk about and you know his lawyers obviously were telling him that they thought the process was legally flawed, but these were devices for him to try and make the whole thing go away. And my view is that is not what he should have been doing.

JH: Do I understand that when he talked about arbitration and mediation, he was talking about arbitration of the process of his challenge and judicial review, or was he talking about arbitrating the substance of the complaints against him.

FM: I'm not 100% clear on that, so originally he wanted, and one of the earlier calls, the first phone call I had with him after the first meeting he wanted me to ask the Permanent Secretary to agree to a process of mediation with the ..

JH: which would have involved him and the...

FM: The complainants, presumably.

JH: Yeah.

FM: Now, I don't know...

JH: because subsequently his solicitors wrote a letter saying they had never looked for this, that they were talking you know about arbitrating the way in which his complaints about the process would be dealt with.

FM: My, I've not seen all of the legal correspondence, obviously, so my understanding, and this is only my understanding, that initially his lawyers were

seeking a process of mediation between him and the complainers. And then, at a later stage, presumably after this had been rejected, it became a process of arbitration of the process, the concerns about the, what he would have described as the illegalities and the flaws in the process, and that's what arbitration was.

JH: Yes.

FM: But to some extent my answers on this to you are conjecture as I have not- apart from the messages he sent me- I have not seen all of the legal correspondence.

JH: Sure. I haven't seen it either but I have been given a certain amount of it. Can I ask you a question that isn't addressed anywhere. What would have been the political consequences of either you, or indeed the Permanent Secretary, deciding to abandon the procedure and agree to some other process to deal with this?

FM: I think I would be sitting here having this conversation with you but instead of the breaches of the Code that I'm accused of, I would be being accused of intervening, using my relationship with him to interfere in a process that I had no role in and making complaints go away because of who he was and what his connections were. And I think the political ramifications of that, had it unfolded that way, would have been just as big if not bigger and in my view much more legitimate criticism would be getting levelled at me than is the case right now.

JH: I must say, it also occurs to me that any civil servant who decided, who took it upon themselves to settle the action at that point..

FM: yeah

J: ... without allowing it to go to a court would find a lot of difficulty in defending that position, although it was ultimately settled in a different way. That I think is a consideration.

I just wanted to direct you to some of the things that are in Mr Salmond's old statement, yeah, I actually think you've dealt with pretty much all of these things that I'm looking at here. In any event, as I said, I don't think there is really much disagreement that the substance of the discussions you had with him was all about the complaints that he had about the Scottish Government procedure, and trying to set up some kind of arbitration or mediation to deal with it, and not about anything else, but I don't think there's any dispute about that. That I think really covers the things I wanted to ask you about. I don't know if there is anything else that you want to mention or emphasise?

FM: I think on the Ministerial Code aspects, I mean you said earlier on but just to check that you think I have covered enough in my statement as to why I didn't report my contacts with him through the Code? And..

JH: Yes, I understand the difficulty you would have had in notifying the matter in the way that, well, I must say that it is something that I have to look at, as to whether in fact the Code does cover a meeting in those circumstances...

FM: Yeah,

JH: but which is another matter, but even assuming it did, I can understand the difficulty, the dilemma you faced in. That was partly why I asked you whether it would have been wiser, having had the first meeting, not to have had any further ones because I think that dilemma wouldn't really have existed had there been one meeting where you wouldn't have anticipated exactly what was going to happen.

FM: No, I can appreciate that, which is why I tried to set out clearly the reason for the further contacts.

JH: Yeah.

FM: The next phone call he called me, the next meeting was very much to be clear ahead of us potentially being together for two days at a conference that I was not going to intervene. And then after that it was just about trying to make sure that I wasn't about to be blindsided. All of my interactions, as far as I am concerned, were in my role as party leader, and you know, I never – I felt I discharged my role as First Minister by being clear, and in practice that I was not doing anything to try to influence a process that it would have been deeply inappropriate for me to have done.

JH: Well, under the process that had been agreed that was the procedure, you weren't involved in it, as had been agreed. Okay, well thank you for that.

FM: Thanks.

JH: I don't think there is anything else that I need to ask you at this stage.

FM: Okay, well thank you for that. I appreciate obviously you are taking this on, these are not easy things for anybody to be involved in, I appreciate.

JH: I certainly didn't anticipate any of this when I was originally asked by Alex Salmond to take it on.

FM: No, I imagine that you wouldn't have thought this. Look, I suppose the last point from me is, and I don't know how closely you follow Scottish politics, Mr Salmond is, and it's a matter of great personal, you know, grief to me, he's on a bit of a revenge mission right now. But I suppose my question is, and feel free to tell me you can't answer this, do you have any sense of your timescale for concluding?

JH: I'm near the end of the procedure. Fortunately from my point of view, there are quite a limited number of witnesses to the key events that are my concern, and I've got fairly detailed statements from everybody. I may have one or two more interviews to conduct, and then it's a matter, I think, at that stage of writing, and finishing off a report. I'm conscious that you have an election coming up in May, and so I'm trying to get it done as quickly as I can, essentially, but I don't really want to put a time on it because until you actually get into the process of writing, it's sometimes not easy to

anticipate exactly how long it is going to take. But I am conscious I don't want it to run up anywhere close to an election...

FM: Yep.

JH: ... which I think is not fair for anybody.

FM: Thanks. Well, suffice to say, when you finish the process of interviews, if there are any other matters you want clarification on or further information...

JH: It's always possible that something will be raised that I may want to come back to people on. But in fact because I have received very full accounts from all of the people concerned, I think, and it's for me to work out where the contradictions are and how I resolve that, but broadly speaking I've had very good co-operation and a lot of information, so I don't really anticipate it is likely I am going to have to go back to people, I hope not anyway.

FM: Well, I am at your service.

JH: If something unexpected comes out at this stage.

FM: Okay. Great, well I really appreciate your time.

JH: Thanks First Minister. Thank you.

FM: Thank you.

Interview with Liz Lloyd: 3/2/2021

Attendees

- James Hamilton, Independent Advisor under the Ministerial Code
- Liz Lloyd, Chef of Staff to the First Minister
- [REDACTED], Secretariat to the Independent Advisor under the Ministerial Code

Meeting transcript

JH: Hello. Before we start I have to read you out some material about taping and so on, which now I'm trying to find it. I had it ... ah, yes. Okay, well, you know the circumstances of what I'm doing.

LL: Yes.

JH: .. and [REDACTED], is going to be present during the meeting to take notes and to provide practical and technical support if required, which may well be required. I've just been 15 minutes trying to connect into this thing.

The meeting is going to be recorded, so there'll be a transcript produced from it, which [REDACTED] will work on, which will be shared with you as a record of the discussion, and once that's agreed the recording itself will be destroyed, so I just want to know if you're ok with that.

LL: Yes, I'm fine with that.

JH: And then obviously in the report, I may need to quote things you say, or refer, in greater

[REDACTED]

[REDACTED]

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[REDACTED]

LL: So, almost immediately after "me too" kind of exploded, if you like, off the back of the Weinstein stuff, there was a story couple of days, maybe a week later in Scotland in one of the newspapers about behaviour in the Scottish Parliament, alleging that two or three MSPs were known to be, you know, harassing people. And from that point on, it was just the subject of all gossip [REDACTED]

JH: So this wasn't an isolated discussion?

LL: No. And it wasn't always the same journalist, so there were, I would say there were three or four who would keep coming back to it. [REDACTED]

JH: Did you mention this to the First Minister at all?

LL: She was aware that we were being asked the questions. At the time when these questions first came up was also when, I think you will be aware from submissions, there was an allegation put to us about his behaviour at Edinburgh Airport by Sky News. So..

JH: She's mentioned that and, but she mentioned that as the only incident I think, and she seemed to have been rather taken aback when you had the meeting on [REDACTED] 2nd of April, and Alex Salmond told her what the allegations were.

LL: Yeah, no, I was quite taken aback by it as well. In relation to the [REDACTED] there was never, with the exception of the Sky incident, nobody ever came with a specific, a time, a place, a person. It was just a general sense.

JH: Yeah, okay.

LL: [REDACTED] So you know Sky was, Edinburgh Airport was the only specific that was ever raised with us

prior to, [REDACTED] what the Former First Minister and Mr Aberdeen then told us on the 2nd of April.

[REDACTED]

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[REDACTED]

JH: And I don't think there's that, I mean I don't have any particular question about what happened about that, there seems to be broad agreement between everyone as to what transpired. That's the main, that's more or less what I wanted to ask you about. [REDACTED] is there anything else that I mentioned to you earlier, something?

[REDACTED] I don't think so. [REDACTED] talked about discussions with FM, I think that has covered most things.

JH: Yeah, but I think that's all covered and it is fairly well agreed what the context was and so forth, so I don't think I need to go in to that. [REDACTED]

[REDACTED]

[REDACTED]

JH: Great. Okay, I think that's about it really, I don't think there's anything else...

LL: Okay.

JH: ... that I need to ask you, I can come back if something else.

LL: Yeah, please do, if there's anything else I'm happy to in person or in writing try and help.

JH: Sure, okay, thanks very much Ms Lloyd. Thank you. .

LL: Alright, that's great, thank you very much.

JH: Okay, bye.

Re: Transcripts

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Fri, 05 Mar 2021 13:34:37 +0000

I will look at them. I do not recall any major problem.

On Fri 5 Mar 2021 at 13:20 <[REDACTED]@gov.scot> wrote:

Hi James,

Just wanted to check if you were content for the transcripts to go to FM and others? I think you had mentioned you had some comments on them so if you send those over I can look at them. FM's office were keen to get the transcript as soon as possible.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 03 March 2021 10:44
To: 'James Hamilton' <[REDACTED]@[REDACTED]>
Subject: Transcripts

Hi James,

FMs' office have been in touch about the transcript of the interview. I know we discussed that you have a couple of comments on it, so I wondered if you could let me know of any comments over the next couple of days and I can issue them to participants.

Best wishes,

[REDACTED]

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RE: Privacy notices- participants in the Committee process

From: [REDACTED]@parliament.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Fri, 05 Mar 2021 13:06:24 +0000

Thanks [REDACTED]

Short answer as about to go into Committee is if you can have a further conversation with Mr Hamilton that would be really helpful to get a more specific timescale as soon as you are able,

Many thanks,

[REDACTED]

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: Friday, March 5, 2021 12:52 PM
To: [REDACTED]@parliament.scot>
Subject: RE: Privacy notices- participants in the Committee process

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Hi [REDACTED]

Many thanks, that's really helpful. I was asking in my capacity as secretariat to Mr Hamilton and separate to Government, to make sure I had correctly understood the approach different parties were taking to data handling and publication on these matters.

In terms of the exact timing of the report, I appreciate this is exceedingly unhelpful, but I'm not able to put an date on it at this stage, even to the extent of a week in which it is likely to be finalised.

Mr Hamilton intends to finalise things as soon as possible, but there are some aspects of the process that are somewhat beyond his control as they require input from various other parties. Would it be helpful if I had a conversation with Mr Hamilton about whether we can put a more exact estimate on this? Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]@parliament.scot>
Sent: 05 March 2021 11:03
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Privacy notices- participants in the Committee process

Hi [REDACTED]

In submitting evidence in line with our data handling statement people / organisations need to consent for it to be published in a form that complies with GDPR and the court orders. We process all evidence to ensure compliance too before publication. Are you asking about our report in your capacity supporting mr Hamilton and separate to the wider government? Not sure of the genesis of your question in relation to mr hamilton's work but come back to me if you need anything else.

Also, I note from FMQs that the government will publish the report from Mr Hamilton the day it is given to them. On that basis, having asked to be alerted when it is provided to the Government, it would now be useful to have an indication / confirmation at this stage as to whether the report will be given to the government next week, the week after that or in the earlier part of the week before purdah rules are introduced. The availability of Mr Hamilton's findings is highly relevant to the Committee's work and members are very keen to have a clear indication as soon as possible.

Many thanks

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Tuesday, March 2, 2021 3:31 PM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: Privacy notices- participants in the Committee process

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Hi [REDACTED]

Possibly a really daft question, but can I double check if the Committee has issued Data Protection notices to all individuals in advance of their evidence being published by the Parliament? Additionally, are the Committee intending to inform all persons named in the report before it is published?

Best wishes,

[REDACTED]

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RE: Meeting tomorrow- attendees

From: [REDACTED] <[REDACTED]@gov.scot>
To: Alex Salmond <alex@alexsalmond.scot>
Date: Fri, 05 Mar 2021 09:15:29 +0000

That's great, I assumed it would be something like that but wanted just to check.

We have the formal start time of the meeting as 3pm, but I will log in about 15 minutes earlier just to make sure the tech is working ok, so if you want to login a few minutes early to check everything works that would be fine.

Best wishes,

[REDACTED]

From: Alex Salmond <alex@alexsalmond.scot>
Sent: 04 March 2021 21:20
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Meeting tomorrow- attendees

Yes [REDACTED] will be there to make sure my electronics work.

Best - Alex

Sent from my iPad

On 4 Mar 2021, at 18:04, [REDACTED] <[REDACTED]@gov.scot> wrote:

Dear Alex,

Quick question ahead of the meeting tomorrow- I've had an acceptance email from [REDACTED] so wanted to double check that you had forwarded the calendar request to him and are intending for him to attend to accompany you? No problem at all, just wanted to make sure I had understood correctly.

Best wishes,

[REDACTED]

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From: [REDACTED]
Sent: 10 May 2021 15:25
To: Geoff Aberdeen [REDACTED]
Subject: RE: Interview transcript [UNSCANNED]

Perfect, speak to you then.

From: Geoff Aberdeen <[REDACTED]>
Sent: 10 May 2021 15:21
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Interview transcript [UNSCANNED]

Yes, when might suit? I'm free tomorrow at 2pm?

Call me on [REDACTED]

Regards,

Geoff

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: Monday, May 10, 2021 2:37:21 PM
To: [REDACTED]
Subject: RE: Interview transcript [UNSCANNED]

Hi Geoff,

I'm well thanks, hope you are well.

Apologies for any confusion about this- when we spoke previously we had discussed Mr Hamilton's suggestion, made at interview, that he intended to send the evidence he considered when preparing his report to the Scottish Government at the same time as the report. I can confirm that this was not done and no evidence has been sent to the SG, save what was included in the report itself.

When we discussed this previously, I had mentioned the matter of what to do with the records of the investigation, which are a public record and should be deposited with NRS in due course. I had indicated that the Secretariat would write to participants to give more details on this process, including how FOI would apply to this material. I am sorry for the delay in taking this forward- this is still a work in progress but I hope to get correspondence agreed and issued as soon as possible.

I think there are some particular things that might be reassuring to you regarding your statement and your interview transcript, which might be easier to discuss over the phone if that would work for you?

Best wishes,

[REDACTED]

From: Geoff Aberdein <[REDACTED]>
Sent: 10 May 2021 14:21
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Interview transcript [UNSCANNED]

Hi [REDACTED]

I hope you are well.

I refer to the exchange below and particularly my email of 15 March. Can you confirm my submission was not indeed sent to the Scottish Government?

Thank you

Geoff

From: Geoff Aberdein <[REDACTED]>
Date: Monday, 15 March 2021 at 11:54
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Interview transcript [UNSCANNED]

Hi [REDACTED]

Thank you for this.

I think the transcript essentially covers what my position is and has been throughout.

[REDACTED]

Furthermore, can you provide me with any information as to how (if at all) I may be referred to in Mr Hamilton's report? As you can imagine, this whole situation has caused me significant amount of emotional and professional discomfort and my strong preference is not to be referred to by name at all.

Finally, I'm extremely uncomfortable with this transcript being sent to the Scottish Government and potentially within scope of a future FOI. I request this is not sent to the Scottish Government in any form. I have done my civic duty in assisting Mr Hamilton with his investigation but remain very wary of the transcript being made available at a later date and causing me further discomfort.

Thank you for your guidance to date and I look forward to hearing from you.

Best wishes

Geoff

From: [REDACTED]@gov.scot>
Date: Friday, 12 March 2021 at 14:11
To: [REDACTED]
Subject: Interview transcript [UNSCANNED]

Dear Geoff,

With apologies for the delay, please see attached transcript of the discussion you had with Mr Hamilton last week. As discussed, this has been adjusted to remove some specific names in certain contexts. Where the transcript has been adjusted, the new text is included in square brackets.

The document is password protected; I will send the password in a separate email.

Happy to discuss.

Best wishes,

[REDACTED]

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